A TREATISE ON

THE

UNCONSTITUTIONALITY

OF

AMERICAN SLAVERY:

TOGETHER WITH THE POWERS AND DUTIES OF THE FEDERAL GOVERNMENT, IN RELATION TO THAT SUBJECT.

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CONTENTS.

CHAPTER I.

PAGE.

Does the Federal constitution guaranty slavery? 7

CHAPTER II.

Character and sayings of those who framed the Constitution of the United States—evidence that they did not intend to sanction or guaranty human Slavery. 8

CAHPTER III.

Public sentiment on the subject of Slavery at the time the Constitution was formed—evidence that the people would not sanction and guaranty human Slavery. 17

CHAPTER IV.

The universality sacredness and inalienability of Human Rights. 23

CHAPTFR V.

The Nation are estoped from sanctioning or guaranteeing human Slavery, by the Declaration of Independence. 27

CHAPTER VI.

The limit and extent of Constitutional and Legislative authority. 33

CHAPTER VII.

Rules of construction and interpretation &c. 45

CHAPTER VIII.

Our Government, its origin, nature, objects and powers. 53

CHAPTER IX.

To recognize the existence of Slavery "*de facto*" does not saction or legalize it. 58

CHAHTER X.

The constitution of the United States, neither legally recogizes, sanctions nor guarantys human Slavery. Representative clause. The migration and importation clause. 61

CHAPTER XI.

The Fugitive clause. 67

CHAPTER XII.

Citizenship and its immunities. 84

CHAPTER XIII.

Positive guaranties. Writ of Habeas Corpus. 97

CHAPTER XIV.

Republican form of Government, 107

CHAPTER XV.

Protection against invasion and domestic violence. 115

CHAPTER XVI.

Right to bear arms—Due process of law. 117

CHAPTER XVII.

The powers of the Federal Government over the Territories of the United States. 124

CHAPTER XVIII.

What the National Government can do to put an end to slavery in the United States. 131

CHAPTER XIX.

How the positive guaranties of the constitution may be made available; The delinquency of the American citizen, &c. 138

PREFACE.

Some time in July last, Mr. HARMON KINGSBURY put into my hands a bundle of thoughts and statistics which he wished to have published in a book :

I. Giving a few general principles.

II. A succinct history of Slavery—white as well as black.

III. A thousand facts and opinions connected with its history among us.

IV. A brief commentary on such parts of the Constitution as relate to the African race in this country, and also of the power and doings of Congress, and of the United States Courts, relating to this matter.

V. The present action of the American people.

VI. Their duties, &c., &c.

During the progress of arranging the materials, it occurred to me that it would be better to make an extended, legal argument, covering the ground which this work occupies; and at some future time publish the facts and statistics which could not be included in this work. To this alteration Mr. KINGSBURY consented.

I then proceeded to arrange the present argument. A few of the first chapters were written to rebut the hostori-

cal presumption that the founders of our National Government would desire or even consent legally to recognize, sanction, or in any manner guaranty human slavery. I next considered certain principles recognized by them as *self-evident*, which would render it impossible for them to do so, even if they desired to. I then examined into the nature of the government which they established, the principles upon which it was established, and some of the rules of interpretation by which we *must* be governed in construing the Constitution establishing that government. I then next examined those provisions of the Constitution which have been supposed to favor slavery, and proved by them the fallacy of all arguments which would, through them engraft upon the Constitution a pro-slavery character. Then I considered those positive guarantys of the Constitution which would render slavery impossible under the jurisdiction of the Federal Government; and lastly considered the powers and duties of the National Government in relation to slavery, and also the duties and responsibilities of the American citizen.

The signs of the times seem to demand this view.

CHAPTER I.

Does the Federal Constitution Guaranty Slavery?

The claim that the Federal Constitution guarantees slavery, will appear very ridiculous when we consider the nature of a guaranty.

To guaranty slavery, the guarantor becomes legally and personally responsible for its continued existence. If the Federal Constitution guarantees slavery, then the National Government as guarantor, stands pledged to maintain its existence by the force of the nation if need be.

But if the National Government is pledged as the guarantor, to maintain slavery, to whom does she stand pledged? Not to the States as such, because they were not parties to that instrument. Besides, the States needed no such guarty. Slavery being constitutional, according to the pro-slavery interpretation, and the States being independant sovereignties, they could maintain the institution by their own legislative action if they desired to do so.

The guaranty, if made at all, is to the individual slave-holder. And this being the case, the States can have no authority to abolish slavery in their respective jurisdictions, because the Federal Government, as guarantor, is bound to maintain it so long as individuals in the States demand it.

Furthermore if the Federal Government, as guarantor, is

bound to maintain slavery under the Constitution, then she has the right and power to take all necessary means to defend it. And if, in the opinion of the National Government, it should become necessary to the maintainance of slavery, to introduce it into the free States, she would have a right to do so, any thing in state laws and constitutions to the contrary notwithstanding.

Again, if the National Government stands pledged as the guarantor of slavery, the States have no authority to abolish it in their respective jurisdictions, without the consent of the National Government; and the government has no authority to consent to it, because the Constitution of the United States binds her to maintain and defend it.

The conclusions which must inevitably follow the assumption that the Constitution guarantees slavery, are so absurd and ridiculous as necessarily to destroy all such argument.

CHAPTER II.

Character and Sayings of those who framed the Constituion of the United States—evidence that they did not intend to sanction and guaranty Slavery.

Much has been said by slaveholders and pro-slavery politicians about the GUARANTEES OF THE FEDERAL CONSTITUTION in favor of SLAVERY. Declarations of this sort have so often been made, that many, without examination, have been led to suppose that guarantys of that discription

were contained in this instrument. Also much has been said of the COMPROMISES of the Constitution between LIBERTY and SLAVERY, and of the obligations which those compromises lay us under to countenance and support slavery.

But we here affirm, and will maintain, that the Constitution of the United States contains no guaranty in favor of slavery, and makes no compromise with it whatever. That the Convention, in framing, and the people, in adopting, that Constitution, did not, and never intended, to guaranty, or in any manner sanction slavery; but, on the contrary, intended to *withhold* all countenance and support of that institution.

A person acquainted with the causes which led to the AMERICAN REVOLUTION, the doctrines upon which that Revolution was based, the justification which our Fathers published to the world, for throwing off their allegiance to a government whose authority they had so long respected and obeyed; and the character of the men who were the principal actors in that grand drama, would not expect that they, in forming a government for themselves, would incorporate into it principles which they had so utterly condemned and repudiated.

He would not expect that such men as Jefferson, Ada Hancock, Rush, Wythe, Sherman, Franklin and others, after publishing to the world the great self-evident truths "that *all men* are created equal, and endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their *just* powers from the consent of the governed"; and appealing

to Divine Providence to sustain them in supporting such declaration, would, after the contest was decided, so belie their professions, so repudiate the doctrines upon which they predicated their authority to throw off their allegiance to their government, so insult their Maker, as to set about forming a government which would legalize, sanction, or guaranty the slavery of their fellow-men.

They said "that governments were instituted among men, deriving their just powers from the consent of the governed." Were they ready to establish a government for holding men, *without their consent*, in absolute bondage? Could they contend that such powers were *just*, and of right belonged to *any* Government? They said "that Governments were instituted for the *protection* of the natural and inalienable rights of man." Would they admit that they were establishing a Government to *crush* and *destroy* those rights? They said "that when Government, by a long train of abuses and usurpations, pursuing invariably the same object, evinces a design on their part to reduce the subject under absolute despotism, it is their *right*, it is THEIR DUTY to throw off such Government, and provide new safeguards for their future security." Did they, in the formation of their government, intend to *impose that duty* upon half a million of oppressed bondmen? Were they men of that trifling character? Were they demagogues of that "baser sort?" If in the formation of the Fedeaal Government, they intended to "legalize," "guaranty," or in any manner "sanction" slavery, they were such men; and whoever affirms that the Constitution of the United States "*sanctions*," "*guarantys*," or in any manner, *upholds* slavery, brands them with being demagogues, liars and hypocrites.

But such was not the character of those men. When they uttered the sublime truth that *liberty* was the *inalienble right* of all men, they spoke the conviction of their hearts; and when, by virtue of that conviction they arose to throw off the government of England, they acted the part of *earnest, honest men.* Nor was it for themselves alone that they claimed these rights, but for *all mankind.* Let them speak for themselves.

Thomas Jefferson, in his notes on Virginia, speaking of slavery, says: "And can the liberties of a nation be thought secure, when we have *removed* their only firm basis, a conviction in the minds of the people that these *liberties are the gift of God? That they are not to be violated but with his wrath?* Indeed, I tremble for my country when I reflect that God is just, and that his justice cannot sleep forever; that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situations is among possible events; that it may become probable by supernatural interference. The Almighty has no attribute which can take sides with us in such a contest."

"What an incomprehensible machine is man! Who can endure toil, famine, stripes, imprisonment and death itself, in vindication of *his own* liberties, and the next moment be deaf to all those motives whose power supported him through his trials, and inflict on his fellow-men a bondage, *one hour* of which is fraught with more misery than ages of that which he rose in rebellion to oppose."

"But we must wait with patience the workings of an over-ruling Providence, and hope that *that* is preparing the deliverance of these our suffering brethren. When the

measure of their tears shall be full—when tears shall have involved heaven itself in darkness, doubtless a God of justice will awaken to their distress, and, by diffusing a light and liberality among their oppressors, or at length by his exterminating thunder *manifest* his attention to things of this world, and that they are not left to the guidance of blind fatality."

Also in his letter to Mr. WARVILLE, in 1778, he says, "You know that nobody wishes more ardently than I do, to see an abolition not only of the trade, but of the *condition* of slavery; and certainly nobody will be more willing to encounter every sacrifice for that object."

Again, in 1778, he says, "The love of justice and the love of country, plead equally the cause of these people, and it is a moral reproach to us that they should have plead so long in vain."

Also in a letter to Dr. PRICE, in London, in 1785, who had written a pamphlet in favor of the abolition of slavery, he said: "From the mouth of the Chesapeake the bulk of the people approve of your pamphlet in theory, and it will find a respectable minority *ready* to adopt it in practice; a minority which, for *weight* and *worth* of character, preponderates against the greater number. Be not therefore discouraged. The College of William and Mary is the place where are collected together all the young men of Virginia, under preparation for public life. They are under the direction of Mr. Wythe, one of the most virtuous of characters, whose sentiments on the subject of slavery are unequivocal. I am satisfied, if you could resolve to address an exhortation to those young men with all that eloquence of which you are master, that its influence on the future

decision of this important question would be great, perhaps decisive. Thus you see that so far from thinking you have cause to repent of what you have done, I wish you to do more, and wish it on an assurance of its effects."

Did Jefferson, while he entertained sentiments of this kind, intend to strengthen the institution of slavery, by sanctioning and legalizing it, and extending to it the guarantys of the National Government? Could any one who had any confidence in his patriotism and integrity, expect to find in the government of his forming, any *additional* support of *that* institution? If the State Governments were too weak to continue and perpetuate slavery, did he wish to give them strength for that purpose? If they were sufficiently strong thus to continue their oppression, did he wish to *add* to their oppressive power?

Did George Washington, while he was helping to frame this Constitution understand that he was throwing the sanctions of the National Government around an institution which he declared *ought to be abolished,* and that his vote should not be wanting for that object? Hear him in his letter to La Fayette:

"The benevolence of your heart, my dear Marquis, is so conspicuous on all occasions, that I never wonder at fresh proofs of it. But your late purchase of an estate in the colony of Cayenne, with a view of emancipation, is a generous and noble proof of your humanity. Would to God, a like spirit might dffuse itself generally into the minds of the people of this country."

Again, to Robert Morris:

"There is not a man living who wishes more sincerely than I do, to see some plan adopted for the abolition of slavery.

But there is only one proper and effectual mode by which it can be accomplished, and that is by legislative authority; and *this*, so far as my suffrage will go, shall not be wanting."

Also a letter to JOHN F. MERCER says:

"I never mean, unless some particular circumstances should compel me to it, to possess another slave by purchase; it being among my first wishes to see some plan adopted by which slavery in this country may be abolished by law."

Did BENJAMIN FRANKLIN intend to incorporate the institution of slavery into the National Government, and enshield it by the Federal Constitution? Hear him as the President of the Pennsylvania Abolition Society, memorializing Congress in 1789!

"To the Senate and House of Representavives of the United States:"

"From a persuasion that liberty was originally the portion, and is still the birth-right of all men, and influenced by the strong ties of humanity, and the principles of their institution, your memorialists conceive themselves bound to use all justifiable endeavors to loosen the bands of slavery, and promote a general enjoyment of the blessings of freedom. Under these impressions they earnestly entreat your serious attention to the subject of slavery. That you will be pleased to countenance the restoration of liberty to those unhappy men, who alone in this land of freedom, are degraded into perpetual bondage, and who, midst the general joy of surrounding freedom, are groaning in servile subjection. That you will devise means for removing this *inconsistency* from the character of the American People; that

you promote mercy and justice towards this distressed race, and that you will step to the very verge of the power vested in you for discouraging every species of traffic in the persons of our fellow beings."

Did Dr. Franklin think the Constitution he had just assisted in drafting, had by its guarantys, bound the Federal Government to sanction and sustain that institution which he was then so *earnestly* praying them to destroy? and which prayer in 1790 was repeated in these words: "that Congress would take measures 'to secure the blessings of liberty' to the people of the United States without distinction of color!" Did he understand that the National Government had no power conferred upon them to grant the prayer of his petition? and was he praying in *mockery* of their weakness?

Did Mr. MADISON think he was building an eternal wall of defence around that institution by the guarantys of the Constitution, when he said "it would be wrong to admit the idea that there could be property in man." Was he a man that would impose upon the National Government an obligation to sanction, sustain and defend an institution like the one he described in the very first Congress under the Constitution, May 13th, 1789. "I should venture to say it is as much for the interest of Georgia and South Carolina (to abolish the slave trade,) as of any State in the Union Every addition they receive to their number of slaves, tends to *weaken them*, and render them *less capable of self-defence*. In case of hostilities with foreign nations, they will be the means of *inviting attack*, instead of *repelling invasion*. It is a necessary duty of the General Government to protect every part of the empire against dan-

ger, as well external as internal. Every thing, therefore, which tends to increase this danger, though it may be a *local* affair, yet, if it involves National expense, or safety it becomes a concern of *every part* of the Union, and is a proper subject for the consideration of those charged with the general administration of the Government." Did he intend to make it obligatory upon that General Government to sanction, sustain, legalize or guaranty that, within itself, which would tend to weaken and destroy the government, and thereby defeat one of the expressed objects for which it was established, to wit: "to provide for the common defence?"

Did GOUVERNEUR MORRIS, when he voted for the adoption of that instrument, understand that he was pledging the whole Nation to the support of that institution, while at the same time he solemnly declared in the presence of the Convention, "*that he never would* concur in upholding slavery." That it was a *nefarious institution.*" "*It was the curse of heaven on the States where it prevailed?*"

Did ROGER SHERMAN think that the Constitution legalized or guaranteed slavery, when he even objected to allow Congress the power to impose a tax on persons imported, if by so doing "they were to acknowled *men* as *property?*"

Did Judge WILSON think the Constitution of the United States had, by its sanctions and guarantys became the bulwark of slavery, when he told the people of Pennsylvania "that it had laid the foundation for banishing it out of the country?"

Did Gov. RANDOLPH understand that the Constitution of the United States would strengthen the hands of slaveholders, by sustaining that institution, when, in reply to the

objection, that "the Constitution would result in abolishing slavery, he did not deny it, but said, "I hope there is no one here who will advance an objection so *dishonorable* to to Virginia. I hope that, at the moment they are securing the rights of their citizens, an objection will not be started, that those unfortuate men, now held in bondage, will, BY THE OPERATION OF THE GENERAL GOVERNMENT BE MADE FREE?"

Did Mr. GARRY, inadvertantly sanction that institution when he stood up and cautioned the Convention "to be careful and lend no sanction to it?"

CHAPTER III.

Public sentiment at the time the Constitution was formed—Evidence that the people would not sanction or guaranty human slavery.

At the time of the framing and adoption of the Constitution of the United States, few, if indeed any, could be found to defend slavery, either in principle or practice. As an institution public sentiment was against it. All were ready to admit that it was antagonistic to the FREE PRINCIPLES which had wrought out the American Revolution, and laid the foundations of the National Government. The

rightfulness of slavery, was not, with them, a question ; all admitted it wrong. They plead no natural or moral sanction; nor did they ask any additional, legal sanction of it. They felt the absudity of the position, which asserted that liberty was the *natural* and *inalienable* right of all men, while at the same time they held their fellow-men in bondage. They confessed it with shame.

But it was an institution which had grown up with the States, and was sustained by State regulations alone. It had become so interwoven with their State policy, so much identified with individual wealth and interest, that to tell *how* it should be disposed of, was the great question, and one which was though more properly belonging to each particular State to determine, than to the National Government.

Up to this time the several States were each sovereign and independent; and had a right to adopt such measures of State policy as they thought advisable, without consulting other governments.

Hence, whenever steps were to be taken in any of the States, for the eradication of this evil, it was thought, and very justly, that each State would find it necessary to adopt such measures as their peculiar circumstances might demand ; and as no two States, in all their interal regulations, and relations to their citizens, were alike, it was thought that different regulations would be needed, in different States. For example, South Carolina would find it necessary, in meteing out *satisfaction*, if not justice, to her citizens to adopt different regulations, from New York in abolishing slavery, and as the people of each State were supposed to be best capable of judging what

regulations would be most suitable to *their own* circumstances; and as they had the *right* to judge, as against the other States, it was not thought advisable to trouble the Convention with that question. Therefore the question of the *legality* or *illegality* of slavery was not submitted to the judgment, or action of the Convention framing the Constitution; and it was not expected that they would pass upon it in any other way than in passing upon general principles.

Nor was it deemed necessary for the National Government to act upon that question. All supposed that slavery had received its death blow, in the promulgation of the doctrines of the DECLARATION OF INDEPENDENCE, by the delegates of all the States, ratified and sanctioned by their constituency. Upon whatever *other* questions or doctrines the American People might differ at that time, there was no difference of opinion as to the truth of these great doctrines, which accorded to every human being "an inalienable right to life, liberty, and the pursuit of happiness."

Enthusiastic in the support of those doctrines, and unyielding in their defence, the inconsistency of slavery appeared in such bold relief that it became truly odious in the sight of all great and good men. Hence it was concluded that it must soon cease. The leading citizens, in nearly all the States, were moving for its abolition; and it was verily believed, that in a few years, the last vestage of slavery would be swept away. They said so, in their Conventions, and none disputed them. Abolition Societies were formed, headed by such men as Hamilton, Jay, Adams, Franklin, Rush, Henry, Madison, Wythe, Washington, Jefferson, Pendleton, Martin, William, Pinckney, and a host of others,

who denounced the institution as unjust and wicked in the extreme. So far as a general understanding could go to make a guaranty, it was the guaranty of *all*, that slavery, in *all* of the States should be abolished at the earliest practical day; and that day *should* not be remote; that those States who, from a sense of duty to the slave, and to the cause of human freedom, had taken, or were about to take measures to abolish slavery with them, should not long, by their federal connection with other States, endure the deep and damning disgrace of human slavery. And in pursuance of an understanding of this kind, the limits of slavery were, as they supposed, forever fixed. By an ordinance which received the unanimous concurrence of all, slavery had just been excluded from all the territories of the United States, and it was their boast, that it could never go further.

It was with feelings and understandings of this kind that the people of the United States came together to from a National Government. Their desire was to pull down, not build up, slavery. All that was asked, on the part of the States was forbearance. They desired time, so to adjust themselves to circumstances as to submit to as little inconvenience as possible in doing it away. They then asked of their sister States the continuance of that comity which had existed prior to the formation of the Federal Union. But they only asked *that* for a reasonable time, to enable them to *wind up*, not *enlarge* their business in slaves; and it is a historical fact, that they intended to form and did form the Constitution of the United States, as though there were none but freeman in the land. They carefully guarded every expression which recognized the continued comity of the States on the subject of slavery, so that the name, character, or con-

dition of a slave, should not appear in that instrument. This was no secret of theirs. They said so, openly and publicly, in the Convention, and before the people. Madison said they must not admit, in that instrument, the *idea* that man *could* be the subject of property. Garry said they must be careful not to extend any sanction to slavery in that instrument. Randolph would not admit the word "servitude," because "it implied the idea of a slave." We say therefore, it is a historical fact, that when the Constitution was formed, it was expected that its provisions would be applicable to all persons in the United States, unrestricted by color, or condition; and the only reason why the rights of freemen were not at once extended to all under it, was the forbearance of the people, and through them of the Federal Government, promised, in consideration that the States should set about, in good faith, the work of abolishing slavery.

This then is the nature and extent of all the compromises the friends of freedom made with slavery. And *this*, even, was an *unwritten* compromise, and is no where to be found in the letter or spirit of the Constitution. It now remains to be seen who have violated the terms of this compromise.

The friends of freedom, and the slave have waited a reasonable length of time for the fulfilment of this understanding on the part of the slave States. A part of them have fulfilled their pledge. But the terms of this compromise, have been constantly violated by the South, for the last sixty years. Every effort they have made to give power and strength to the institution of slavery, by extending and fostering it, is a direct and flagrant violation of that early

understanding. More than sixty years have elapsed, and what provision have these States made, to rid themselves of this national disgrace, and national curse? *None! Absolutely none!!* They have not taken the first step to redeem their promise, or fulfill the understanding.

But, on the contrary, THEY HAVE LABORED TO build up, EXTEND, and PERPETUATE THE CURSE. They have increased the number of slaves from one half to three millions. Instead of contracting its limits, they have added territory to territory, and state to state. The Louisiana territory, Florida, Texas, New Mexico and California have been brought into the Union, with an expressed design, as to a part of them, at least, to extend and perpetuate slavery, to give it territorial and political strength. The POWER AND PATRONAGE of the National Government, by their influence have been prostituted, for these base and ignoble purposes, and used to pull down liberty and build up slavery. They have made the prosperity of that institution the paramount question. They have made devotion to slavery the test, without which no man could receive their vote for any Federal office. To maintain it, they have stricken down the freedom of speech, and of the press. They have demanded, and received, the highest executive sanction, to establish a censorship over the mails of the United States. They have converted our National Capital into the most disgraceful slave market in the world. They have imprisoned and sold into slavery the citizens of free States. They have refused to permit a sovereign State to appear before the Federal Court within their limits, to try the constitutionality of those laws by virtue of which they imprision and sell her citizens. They have imprisoned, scourged, and put to death, the

citizens of the United States, who had gone among them to plead in behalf of crushed and bleeding humanity. They have assaulted the representatives of the free States in the halls of Congress, and threatened them with instant and violent death, should they be found within their borders. They have offered high rewards for the heads of our most distinguished citizens. They have denied to the Freemen of the North the right of petition; and there is no wrong, insult and injury they have not practiced upon the advocates of freedom.

This is the manner in which this unwritten promise and understanding has been fulfilled on their part. Therefore we say the compromise is at an end. By their own faithlessness they have terminated it.

CHAPTER IV.

The universality, sacredness, and inalienability of Human Rights.

The existence of human slavery is an antagonism in any government, not based upon physical force. It cannot be reconciled with the fundamental principles upon which *our* government rests.

All men are possessed of the same natural rights, secured

by the same natural guarantys—held by the same tenure—their title is derived from the same source. Now, if this title is not good in all, and each, it is not good in any. If it is defective as to any, it is defective as to all. And the same Court that decides against the inalienability of the natural rights of a single individual, decides against the inalienability of the rights of every human being; and by its own judgment makes its own members proper subjects of slavery.

To illustrate this, we will suppose that all the people of the city of New York hold their title to their real estate in the city through a single individual. Suppose all the several conveyances from the original proprietor, down to the present holders, to be regular, and in due form, that is, they have each and all derived their titles from the same source, secured by the same guarantys, and held by the same tenure. Now if the title of any of these fail, it must be because the title of the original proprietor is defective. And if *his* title is defective, then the title of all the others must be defective; and the same Court that awards judgment against one, virtually awards judgment against all who have derived title from that source.

We come, then, to this: Has man an inalienable right to life, liberty, &c.,? or are these rights dependant upon the amount of *physical force* he can wield in their defence; and when overpowered, do these *rights cease*, and the individual stand forth a *naked human chattle*, divested of all right? Was this the sentiment of our Revolutionary Fathers? Is this the spirit of the immortal Declaration of Independence? Was the war of the Revolution fought to establish such a principle as this? Yet the doctrine that the States in their

sovereign character, can make any class of men slaves, asserts all this. And they who assent to it, are guilty of sustaining the principle upon which all despotism rests.

If the doctrine of the *inalienability* of man's natural rights be true, then each man's claim to these rights is good against any, and all mankind; and he has a right to assert and maintain them, before any tribunal that recognizes the doctrine; and no man, or body of men, can lawfully resist his claim, or deny to him that which is *rightfully* his own.

But it is claimed that governments can lawfully enslave their subjects. By virtue of what right, or authority can they do so. They can have no righful power, not delegated to them by the people : and the *people* can delegate to them no power which they, as individuals, do not posses. As individuals they have no rightful power to enslave their fellow men. Hence they can have no such right, in their governmental character. And it is as much an unlawful usurpation of power, on the part of government, to enslave an indiv idual, as it would be for a single individual to do so. A has no right to enslave his fellow. B has no right to do it, neither has C, D, E or F. Then by what rule of reasoning is it, that A, B, C, D, E and F, together have that right ? It is not so. They cannot possess it. The right of the Pirate in his slave-ship, to his human cargo, is as full and perfect, as the whole world can make it. Every nation on earth, may by special enactment, declare that he is the rightful owner of his cargo of human beings ; yet he thereby acquires no additional right, and the poor victims loose none. *Rights* are not things that men can *make*, or *mar*.

Therefore our conclusion is, that men cannot rightfully make human beings *chattles*, by virtue of any authority

which they possess; nor can they delegate any such authority; and if they attempt it, nothing is conveyed by the pretended grant.

Deny these truths, and you destroy the foundatian upon which society is based. Violate them, and you are at war with yourself, with Man and God. Admit that any human government can rightfully make a slave, and you have given up the only ground upon which you can defend *your own liberties*, and the liberty of your *wives* and *children*,—

But as legislatures can pass no laws, that will chattleize man because no one can confer on them such authority, therefore whenever they make any such enactments, they are of no validity, for the same reason that all other acts of theirs transcending their authority, are null and void; and all courts are bound so to declare them. Hence the principle, recognized as sound law in all civilized countries, "that the law of nature—*natural justice*, (as Justinian has it,) is superior in obligation to every other law. It is binding all over the globe. in all countries, at all times. No human laws are of any validity, if contrary. And all such as are valid, derive all their force and authority from the orginal." (Bla. Com. vol. 1, 41.) Also *Chief Justice Hobert* has said, "that even an act of Parliament, made against natural justice, is void." This doctrine has, however, been denied in England, on the ground, that *Absolute Despotic* power is vested in Parliament, and there is no other power under the British Constitution to control it. But it is also there held, that the court will not *construe* an act of parliament to be against natural justice, if, by any possible means, they can avoid it. That "they will make no *construction* to do wrong."

If Parliament will enact a law that conflicts with natural justice, it shall make known its intentions, by language so clear, explicit, and unequivocal, as to leave no room for *construction.* And, were it not for the *absolute, despotic* power of Parliament, that holds itself above, and independent of the people, the English judiciary would go the full length of the doctrine, that all laws which conflict with the claims of natural justice are void. As it is, this is the spirit of the British Administration, and so far as their precedents are of any just force, and authority, in this country, they would authorze our courts to go the entire doctrine.—For *here* we do not recognize the existence of *absolute, despotic* power, either in the Government or people. All civil and political power, in this country, is limited by the inalienability of man's natural rights.

CHAPTER V.

The Nation are estopped from sanctioning or guaranteeing humau S lavery, by the Declaration of Independence.

When a man or body of men, in their individual, or associated capacity, deny the existance of certain rights and powers in others, circumstance like themselves, and base all of their own individual or governmental action upon the

truth of those positions, if they afterwards attempt to assume those rights, and exercise those powers, in acting upon the rights of others, their actions and assumptions, in all such matters, are confessedly without authority and void.

Hence the affirmation of the *American Colonies*, as to the existance of certain great fundamental principals, described as *self-evident truths*, puts it forever out of their power, rightfully, to establish, or maintain human slavery.

It has been said by MR. PHILIPS, in his review of MR. SPOONER, "that the DECLARATION OF INDEPENDENCE had nothing to do with slavery." That, that paper dissolved the political bands that bound the Colonies to England, and that was all it did, and all it intended to do."

What had the affirmation of those great, self-evident truths to do with dissolving the political bands that bound the Colonies to Great Britain? What had the doctrine, that governments "derived all their *just* powers from the consent of the governed," to do with sundering such bands? What had the declaration, "that when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design," (on the part of the government,) "to reduce" [the subjects,] "under absolute despotism, it is their right, it is *their duty* to throw off such government, and provide new guards for their future security," to do with declaring themselves independent? The plain answer is, these truths were uttered as the *foundation of their right*, thus to dissolve those "political bands," and establish a government for themselves, "laying its foundations on such principals, and organizing its powers in such forms, as to them seemed most likely to secure their happiness and safety." These truths were uttered as the great law of God,

which arose in authority, above all political constitutions, and governmental powers, and guaranteed to them, *as men*, the authority by which they were about to act.

And they claimed no peculiar rights above their fellows. They set up no pretence, that any special grant had been made to them. They predicated their authority upon the equal, common rights of man. They claimed all their powers by virtue of their common humanity, and, by that claim, accorded to all other men the same rights and powers.

By denying to the government of Great Britain, the rightful power to violate these privileges in their own persons, they denied to *themselves* the rightful power to violate them in the persons of others ; and by this solemn act of theirs, they are forever estopped from setting up such claim. The Declaration of Independence was a solemn deed of acquittance, of all rightful power to violate the natural and inlienable rights of man, acknowledged before God, in the presence of the world. That deed of acquittance contained the the following covenants.—

1st. That life, liberty and the pursuit of happiness, are gifts from God to man, and therefore the natural and *inalienable* right of all.

2nd. That governments "drive all their *just* powers from the consent of the governed," and are established for the protection of these natural rights.

3rd. That when governments become destructive of these ends, for which they are established, they act without authority, and the people are at liberty to resist, and throw them off.

4th. That when the government evinces a design to disregard the ends of justice, and reduce her subjects under

absolute despotism, *it is their duty* to overthrow such government, and establish new guards for their future security.

Who were they that thus executed this great deed of acquittance ? For, and in whose behalf was it thus executed ?

They were the Representatives of the THIRTEEN UNITED COLONIES in general congress assembled ; and they assumed to do it in the name, and by the authority of the good people of those colonies. They were the chosen Embassadors of all the States ; emphatically the leading minds of the nation. They were such men as Jefferson, Hancock, Adams, Garry, Wythe, Carrol, Sherman, Morris, Rush, Franklin, and Lee. They were men selected by the people for their wisdom, virtue, prudence, patriotism ; and empowered to spead and decide for their respective nations. They were men whose sentiments were known, and approved by the the people. They were to utter forth the PEOPLE'S determinations.

This was no sudden, or rash act of theirs. For years they had witnessed the steady encroachments of the British Government upon their rights and liberties. They had become familiar with the great doctrines they were about promulgating to the world, as the basis of their action. Reflection, Reason, Judgment, Consciousness had demonstrated their eternal truths ; history and experience had taught their necessity ; and humanity had proclaimed their value, and taught them to exclaim " *Liberty or Death.*"

They were not uttered under the influence of passion, as the outburst of a transcient enthusiasm. They knew they must be prepared to vindicate these truths, at the expense of blood, and treasure. The step they were about to take was

a final one, from which there was no retreat. It would necessarily involve them in a conflict with the most powerful Nation on earth,—with a nation, who was master of the Ocean, —a nation in whose hands were even then, the strong defences of their own country; and lastly, a nation of fathers and brothers :—A country they had even been proud to call their mother, and to which they were bound by the strongest ties of sympa.. / and affection. This then was not the effect of haste, but the work of cool heads and strong resolute, and brave hearts. They were inspired by all that was noble, great and true; and as those venerable men sat in that Hall, and one by one, executed that deed for freedom, the sacred stillness of that hour betokened the audience of angels. Then they rose above the mortal *and uttered forth the Law of God.*

And did their constituents repudiate these doctrines? No! They flew to arms, and for seven long years endured toil, privation, exposure, and eminent peril, fighting, in vindication of those truths. There was not a town, or a hamlet in the land, that was not made vocal with the ratifying shout. The *Declaration* of *Independence*, was read in Churches, in Court-houses, in Work-shops, in the field, and by the way; and one long, universal *amen* went pealing up to heaven, in ratification of that Deed. The day on which it was published, became an era in the worlds history. There was no battle fought, or victory won, by the force of arms; but it was a day made holy by the advent of the great doctrines of *Universal Freedom*—

Thus we have seen, that the *Inalienable Right* of all men to liberty, was proclaimed by the representatives of the thir-

teen, united colonies, in congress assembled, in the name and by the authority of the good people of those colonies : that the people ratified the proclamation in the most earnest and solemn manner ; and that by so doing they have denied to themselves the power to trample upon the rights and liberties of their fellow men-

According to their views, there must be a true source of all olitical power, and there must necessarily be a *limit* to al. political power, in all just governmenis. This *scource* of power was the the people ; the limit of that power was the inalienability of the rights of man. Hence they repudiated the dogma that government possessed absolute, despotic power, or could possess any such power, for the people had no such powers to delegate,. Government could never legitimately trample on the rights of mau, for the two-fold reason, first, because it could never rightfully acquire any such authority, and secondly, such action would be destructive of the ends for which government was created and would re-invest the people with all their original authority

Let this then be remembered, in construing the constitution formed by these men, who, for themselves and the people thev represented, disclaimed all such authority, and we shall find that no language found in that instrument no force of circumstances, no historical proof, not even all combined, can make that instrument legally recognize, sanction, or guaranty human slavery.

CHAPTER VI.

The limit and extent of Constitutional and Legislature authority.

It seems unnecessary in this work, to devote any time to the consideration of rules of *interpretation* and *construction*. The provisions of the Constitution, relating to this subject, are so simple and easy to be understood, that no interpretation or construction seems necessary. We can indulge the friends of slavery, with an unwarantable degree of latitude in the construction or interpretation of that instrument, and still defend it, from the gross scandal of supporting slavery. In truth, the greatest latitudinarian in the country, would find it difficult, with the aid of his loosest and most liberal rules of Constrution, to extort from it, by a connected train of reasoning, any argument in support of slavery.

Still it may not be amiss, to offer a few thoughts on the subject of these rules, for the purpose of showing the pro-slavery interpreter how utterly without foundation he is, in his effort to engraft slavery upon the Constitution of the United States.

It is a fundamental principle of our government, that natural rights, such as life, liberty &c., are inalienable and supreme, and above the authority of all governments. That governments are institutions of the people, for the *protection* of these rights and liberties; and that it is incompetent for

them to enact laws for their destruction. Hence the presumption always is, in cases of doubtful interpretation, that the legislature intended to do, or require nothing contraty to natural right and justice,—and unless the language of the exactment is so clear and explicit, that it is impossible to avoid the contrary conclusion, the courts are bound so to interpret them; or to use the language of the Supreme Court of the United States, in the case of UNITED STATES, *vs.* FISHER, 2 CRANCH, 390: "Where rights are infringed, where fundamental principles are overthrown, where the general System of the law is departed from, the legislative intention must be expressed with irresistible clearness, to induce a court of justice, to suppose a design to effect such objects."

But, it has been supposed by some, that when, that legislative intention, to infringe rights, overthrow fundamental principles, and depart from the general system of the law, was expressed with irresistible clearness, the courts were bound, to enforce that intention; and MR. PHILIPS, in his review of MR. SPOONER, *denys* that, in this country, courts are at liberty to disregard such enactments; and in remarking upon the subject, says: "This question is not to be confounded, with one somewhat similar to it, and which, has sometimes, been discussed, especially in England, whether a judge there, may disregard an unjust statute. Our question is different; for it should be remembered, that in England, there is no written constitution. Even if a judge had such power there, (which he has not) it would by no means follow, that he had the same under our form of government. There, the judge, swears to bear true allegience to the king. It might therefore, with some plausibility, be argued that,

having no test to which, to bring acts of Parliament, except the rules of natural justice, judges were authorized to declaire them void, when inconsistent with those rules."

The distinction, which Mr. Philips has made, between the character of the Brittsh and American Government, is such, as would lead us to directly the opposite conclusion, and is a distinction necessary to be made, in determining the *force* of English precedent.

The British government has no written constitution. The legitimate powers of parliament, are not restricted by any written or unwritten law. And in theory, and practice Parliament is absolute, supreme, uncontrolable, and irresponsible. In the language of Lord Coke, "It hath sovereign, and uncontrolable authority, in the making, confirming, enlarging, restraining, abrogating, repealing, revising and expounding of laws, concurring matters of all possible denominations, ecclesiastical, or temporal; civil, military, maritime, or criminal; this being the place where that absolute, despotic power, which must, in all governments, reside somewhere, is invested by the Constiution of the Kingdom." Here we have a full key, to those English precedents, which say, "If Parliament will enact laws that are against natural justice &c., the courts are not at liberty to disreguard them" &c.

In the theory, of the founders of that government, absolute, despotic power, is a necessary incident to all governments; and in theirs, that power is vested in Parliament, and there is no power under that government, authorized to control it. They hold that the right of government, is derived directly from God, not through the people, and therefore, they are not responsible to them. That, what they do

for the people, is a matter of "grace" &c. Hence, English precedents go far to sustain the doctrine of Mr. Philips. But even under this high, all commanding power of the British Parliament, to authorize, or sanction a wrong, the language must be clear, explicit, and unequivical, for "the law will not make a construction to do wrong."

But the theory of the institutions of this country, is entirely different. It is no part of our doctrine, that *absolute, dispotic power* resides anywhere, not even in the people, much less in the legislature. They denounced this doctrine in their Declaration of Independence. They defined the nature, source and object, of all political power, and affixed limits, beyond which it could not rightfully pass. It is our theory, that all governmental power emenates from the *people,* and is delegated to be used for the protection of the natural and inalienable rights of man; that this power, coming from the people, can never rise above, or become independent of them. It is our theory, that when governments become destructive of the ends of justice, and right, it is the *duty* of the people to overthrow them.

It is our theory, that the legislatve department of our Federal Government, is the creature of the National Constitution, and has no powers not delegated therein; and that it is only supreme in the legitment, and constitutional exercise of those powers. It is the theory of our government, that the judiciary is independent of the legislative department, and is as supreme in the exercise of its legitimate functions, as is the legislature. That it is the perogative of the judiciary to sit in judgment upon the enactments of the legislature, and to declare such laws void, as they shall think transcend the scope of legislative authority, or confliet with

the general objects and designs of the government. It is the theory of our government, that men possess certain, natural rights, which cannot be *alienated* by themselves, or others ; that no government can have the rightful power to disregard and trample upon them. Hence, Courts in the United States have full authority to declare all laws null and void, which violate the fundamental principles of natural right and justice. And in this respect they are entirely independent of the legislative departments. So then, the the conclusion is, that however much the judiciary of Great Britain may feel themselves bound to give force and effect to unjust and wicked laws, enacted by Parliament, it is not so in this country. And as our National Government was ordained by the people, for the purpose of establishing justice, and securing the blessings of liberty, &c., it becomes the *duty* of the judiciary, if they find the legislature going beyond their legitimate sphere of action, by enacting laws destructive of liberty and justice, to declare all their improper action void. At all events to hold, that the legislature can have no authority to do, or require, that which is wrong, or destructive to liberty and natural justice, by virtue of any *implied* power. That if they *will* sanction that which is unjust and wrong, they shall be compelled, not only to show clear and unequivocal *authority, expressly given* for so doing, but shall also express *their intention* in language so clear and positive as to admit of no other interpretation.

And it may be proper further to remark, in this connection, that the decisions of courts in this country, denying to themselves the authority to disregard wicked and unjust enactments, have been based entirely upon English precedents—thereby gving to American Legislatures the abso-

lute, despotic authority, and uncontrolable power of the British Parliament, and making themselves but the mere humble, passive exponents of legislative will, like the British judiciary.

That this may be fully understood, we will refer to a few English decisions and comments, which our American judges quote as authority, without noticing the want of similarity in the two forms and theories of government.

PROF. CHRISTIAN, in his notes on Blackstone says, "If an act of Parliament should, like the edict of Herod, command all male children, under a certain age, to be slain, the judge ought to resign his office, rather than be auxilliary to its execution; *but it can only be declared void, by the same legislative power by which it was ordained.*"

Although the above may be good law under the English constitution, no one will pretend that such a principle could obtain here. Our courts would find no difficulty in declaring such an edict void.

Again, *Mr. Blackstone* says, "But if Parliament *will positively* enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution, (British) that is vested with authority to control it." * *

* "where the *main object* of a Statute is *unreasonable*, the judges are not at liberty to reject it" &c., "for that were to set the judicial power *above the legislative* which would be subversive of all government."

Here it will be observed, the difficulty is, the interference with the *supreme, absolute, despotic* power of Parliament, which, in England, must be maintained at the expense of all things else.

Also *Mr. Chancellor Kent* says, "It is a principle in the

English law, that an act of Parliament, delivered in clear and intelligible terms, cannot be questioned, or its authority controlled in any court of justice: when it is said in the books that a statute contrary to reason, to natural equity, or repugnant, or impossible to be performed, is void, the cases are understood to mean that the courts are to give them a reasonable construction. They will not readily presume, out of respect to the law giver, that any very unjust, or absurd consequence was within the contemplation of the law. But if it should happen to be too palpable in its direction, to admit of but one construction, there is do doubt, *in the English law*, as to the binding efficacy of the Statute. The will of the legislature (Parliament) is the supreme law of the land, and demands implicit obedience " Kent Com. 1. Vol. 447.

Observe the binding efficacy of an unjust law is predecated on the *absolute, despotic power* of Parliament.

Also from Paley, "There necessarily exists in every government a power, from which the constitution has provided no appeal, *absolute, omnipotent, uncontrollable, arbitrary, despotic.* This power, or assembly is the *supreme power, the legislature* of the State."

We might continue these quotations, indefinitely, illustrating the same point, but the above are sufficient.

We will however, look to a little authority on the other side of this question. The proposition maintained by law writers is this—

"No government or authority whatever, can do that which is subversive of the ends for which it owes its existence."

Puffendorf says, "That it is God who imposed the law of nature upon the Human Race, and dictated the establish-

ment of civil societies to serve as instruments of enforcing these laws."

Domat declares, "that sovereignties can have no other rights, but such as have in them nothing contrary to the use which God requires them to make of said power. The sovereign power can only be legitimately exercised for the *end* to be obtained, and that *end* is the protection and preservation of the lives liberties and property of the citizens, and not for the destruction of either. That the wise and the good and the just is the circle of the Divine law within which the human sovereignty must move; that the law being the embodiment of all perfection and justice, its spirit as well as its letter denies the right of man to do an unjust act, or to infringe upon natural rights" Domat Pub. Law B. 1.

"The sovereign power can only be called into exercise for the attainment of the great end, which that compact was designed to secure, and cannot be converted into an engine to defeat the end mankind had in view, when they entered into their social compact; and the moment this inviolate and sacred rule is departed from, there is a criminal abuse of power from which no obligation to obedience can arrise" Vattel B. 4. sec 45-46.

John Lock, "Though the legislature be the supreme power it cannot be arbitary over the lives and fortunes of the people. The legislative power in the utmost bounds of it, is limited to the public good of society. It is a power that has no other *end* than the *preservation*, and therefore can never have a right to *distroy, enslave*, or designedly impoverish the subject." Lock's works v. 5. ch. 11 p. 416.

Robert Hall takes the same view and denies the correct-

ness of the reasoning of Burk and others, who ascribe despotic power to Parliament.

The doctrine of the omnipotent power of Parliament now only exists in theory. It was denied in effect by Wm. Pitt and Lord Thurlow in their opposition to the Bill annulling the East India Co., in 1783.

In the supreme Court of U. S., Mr. Justice Chase, could not submit to the omnipotentce of State Legislation, or that it was absolute or without controll, although its authority should not be expressly restrained by the constitution. He held "that the people of the United States, enacted their government to establish justice, to promte the general welfare, to secure the blessings of liberty, and to protect their persons and property from violation. The purposes for which men enter into society, determines the nature of the social compact, as they are the foundation of legislative power, they will determine the proper objects of it" Calder vs. Bull 3 Dallas Rep. 386.

In Taylor vs. Porter, 4 Hills Rep. N. Y. on the question whether private property ought to be taken by the Legislature for *private* use, Bronson Judge held "that though no constitutional inhibition interfered, the legislative power did not reach to such an unwarrantable extent. That neither life, liberty or property, except when forfeited by crime, or when the latter is taken for public use, falls within the scope of its power, and that when it steps beyond the bounds of its power, its acts, like those of the most humble magistrate in the land, are utterly void.

In Gorhom vs. Stonington 4 Conn., Rep. Hosmer J. held, "If there should exist a case of direct infraction of vested rights, too palpable to be questioned, and too unjust to be

vindicated, he could not avoid considering it a violation of the social compact and within the contol of the judiciary.

In Wilkinson vs. Leland in the U. S. Court, 2d Peters, Rep. 654. Same doctrine held by Webster and sustained by the court.

In Supreme Court of South Carolina, 1. Bays Rep. 252, Bowman vs. Middleton. It set aside an act of the Legislature as being against common right, on the ground that it took away the freehold of one man and vested it in another without any compensation, or any previous attempt to determine the right, declaring the act *ipso facto void.*

Again the same Court held, "That a statute framed against common right and common reason was so far void, as it was calculated to operate against those principles. But they said the court would not do the legislature, that injustice to say that such was their intention, and therefore would give it such a construction as would be consistent with the dictates of natural reason, though such construction might be contrary to the letter of such statute."

It being the well settled theory of our government as before observed, that men's *natural rights* are the true basis of all governmental power and authority, and the *inalienability* of those rights, the *limits* of that authority, hence when the American judge is called to sit in judgment upon an enactment of the legislature, it is his first business to see that the subject of enactment is within the scope of the constitutional authority of the legislature. He will then, construe the act, if possible, to mean nothing inconsistent with the natural and inalienable rights of man. But if he finds the language to clear and explicit to admit of any other construction, he will next examine into the constitutional

authority by which such a particular law was enacted; and if the constitution does not in direct positive, and unequivocal terms, thus authorize such legislation, the judge will hold the law to be unconstitutional and void. But if, on examination he should find (which thank God he cannot) an express unequivocal grant of authority in the Federal Constitution, to pass laws destructive of liberty, and the rights of man, he would then hold the grant void, for want of authority in the people to make such a grant—for, to admit the right of the people to establish a government distructive of the rights of man, is to deny the *inalienability* of those rights, which is to deny the authority of the people to establish a government in defence of them: and thus deny the source of all governmental authority, except what proceeds from brute force.

But it is objected, that it would be dangerous to the rights and safety of community to allow courts the authority to decide that positive enactments against justice are void. But we submit, whither it would be *more* dangerous to commit such a power into the hands of the judiciary, than to commit *absolute, despotic* power into the hands of the legisature, who might pass laws distructive of natural right and justice, and make it obligatory on *courts* to *enforce*, and the *people to obey* them.

But further, to enforce their objections to allowing courts of justice this authority, the objectors urge the impropriety and absolute absurdity of permitting courts to exercise an *unlimited* discretion, and to set up their various standards of right and wrong, by which to try the validity of legislative enactments.

Admitting the impropriety and absurdity of conceeding to

courts are *unlimited* discretion, yet no such impropriety, or absurdity would exist if courts, in the exercise of their judicial functions would limit their resistance, to the violation of those natural rights, and the principles of natural justice, which are *admitted* to be true, by the judicial tribunals, both in England and America; and which were also confirmed by the founders of our American Institutions, the people themselves; and more especially would there be no reason to apprehend danger, if the courts should confine their discretion to the vindication of those great, natural rights, which we as a Nation affirmed were *self-evident* and *inalienable*. With these principles lying at the foundation of our Institutions, and which must be true, or they are false, there can be no danger of *subverting* this Government, by keeping the legislature within these bounds.

Hence then, we say, the judiciary are at liberty to hold, that all grants and enactments, which are in direct conflict with those fundamental principles, upon which our Government is based, and inconsistent with those rights which we, as a Nation, declared to be "*self-evident* and "*inalienable*," are absolutely null and void; and they are not only at liberty, but it is their imperative duty so to hold and decide: and also, courts are bound to give an innocent meaning to all grants and statutes, if by any possibility the language will bear such a construction.

CHAPTER VII.

Rules of Construction and Interpretation.

The Supreme Court of the United States, in construing certain parts of the Constitution, have, on several occasions, referred to, "Historical evidence of the meaning of certain provisions of that instrument. It may be proper, in this place to examine the question how far they are at liberty to travel out of the record into the uncertain, indefinite history of the times, to ascertain the meaning of certain provisions of the organic law of the land." The practice is certainly a novel one, and the propriety of it should be fully investigated and settled, before it finally grows into settled law. If there is any thing in the nature of the institutions of our country which requires such a rule of interpretation to be adopted let it be known, and if the nature of the difficulty be such, that it cannot be obviated without the introduction of so uncertain and dangerous a method of construction we must submit. But we are confident that nothing short of the most urgent necessity will ever obtain from the profession their consent to the introduction of so strange and anomolous a rule.

If we are to depart from the letter and spirit of a written instrument, and search for the intentions of the makers thereof, in the journals, newspapers, debates, and partisan representations of the sayings and doings of those who participated in the making of the instrument, it will become necessary to re-moddle certain other rules of interpretation

which hitherto have been considered good and necessary, and also to determine what histories shall be considered authentic, and upon what subjects they shall be considered conclusive, &c., &c.

The rules of construction laid down by Blackstone, and referred to by *Mr. Story*, are simply these.—Says Blackstone, "The fairest and most rational method of interpreting the will of the legislator is, by exploring his intentions at the time the law was made, by signs the most natural and probable; and these signs are either the *words*, the *context*, the *subject matter*, the *effect and consequences*, and the *spirit and reason of the law.*

Now take each of these rules separately and where do we find authority for the Supreme Court to take into consideration, "The history of the Times," and "National circumstances," in giving to any particular clause of the Constitution a construction?

First,—"The intention must be obtained from the words of the legislator, and they are to be understood in their most usual and known signification. They may have a technicalcal signification in popular use. Also terms of art may be used, and persons skilled in the art may be called in to give the deffinition of such terms." Still this does not authorize going beyond the instrument for any thing more than to get the true definition of the words used.

Second,—If the words remain doubtful we are at liberty to refer to the *context*. This may be found in the proeme or preamble. Also in a similar law passed by the same legislator, at or about the same time. Thus when the English law declares murder to be felony without benefit of Clergy, it is necessary to refer to the same law to see what benefit of clergy is.

In this case we are only seeking for the definition of a term used in the law.

THIRD,—we have a right to look at the subject matter, Words are always supposed to have refference to the subject matter. Thus the word "provisions," used in a statute prohibiting the purchase of nominations to beneficies by the Pope, and which benefices were called "provisions," was intended to mean such benefices and not grains &c.

FOURTH,—we have a right to consider the *effects* and *consequences &c.* This is interpreted by Blackstone to mean, "Where words bear either none, or a very absurd signification if literally understood, we must deviate a little from the true sense of the words." Thus the Bolognian Law which enacted "That whoever drew blood in the street should be punished with the utmost severity," was held after long debate not to extend to a surgeon who opened the vein of a person who fell down in the street in a fit."

FIFTH,—we have a right to look to the *reason* and *spirit* of the law. For when the reason of the law ceases, the law itself should cease. This is illustrated by Blackstone thus, "There was a law that those who forsook the ship in a storm, should forfeit all property therein, and that the ship and lading should belong entirely to those who staid in it. In a dangerous tempest all the mariners forsook the ship except only one sick passenger, who by reason of his disease was unable to get out, and escape. By chance, the ship came safe to port. The sick man kept possession and claimed the property. Now all the learned agree that the sick man is not within the reason of the law, for the reason of the law was to give encouragement to those who would venture their lives to save the vessel."

Now taking these rules of construction, and where do the court get their authority for going into "collateral history," or national circumstances," to give an unjust or wicked meaning to any clause in the constitution ? From which of these rules do they take their license ? To whose history are they authorized to refer ? To what "national circumstance," can they anchor and say, this is to give the true interpretation thereof ?

It appears from the forgoing rules, that we have a right to look at the general common established meaning of the words used, in a dictionary, or other works where the true signification of the words may be found. We have a right to look at the preamble, with a view of ascertaining the true reason and spirit of the law. We have a right to look into other laws passed by the same legislator, on the same or a similar subject, about the same time to ascertain the meaning of a certain, peculiar expressions used as "Benefit of Clergy, Simony &c." We have a right to look to the *subject matter*, but this must be ascertained from the act itself. We can look to the effects and consequences, to see if they harmonize with the apparent design of the legislator; and we have a right to look to the reason and spirit of the law to see if the case at bar is one which was in the contemplation of the legislature. But it will be observed that none of these rules launch us out into the wide ocean of conflicting, "collatteral history, or national circumstances," in search of light ; and as the court very justly observed in the case of Mitchel vs, Great works &c Storys C.C.R. v 2 p 653, "Such a course would deliver the court over to interminable doubts and difficulties, and we should be compelled to guess what was the law from loose commentaries and debates instead of the precise enactments of the statute."

But even if the courts could indulge any such latitude in the construction of statutes, the case would be entirely different in the exposition of a fundamental law, like the constitution of the United States. It is all important that such an instrument should be strictly construed. For if a loose construction be allowed. there will be no limit to the implied powers which a fertile immagination, or an ambitious, or designing administration may not graft upon it. Powers never intended to be granted by the people, will be assumed. In all governmental bodies, there is always a strong tendency to usurp power. Hence written constitutions were adopted to hold them in check. But these have not always been successful. The doctrines of latitudinarian construction readily form a ladder by which all constitutional bulwarks are scaled ; and history has demonstrated that there is no safety in allowing courts, or legislatures to go beyond the plan, palpable meaning of the grant, in construing written constitutions,—and more especially should our courts and legislatures be kept within the plain letter of the grant, if the power sought to be grafted on by implication is one in conflict with natural right and justice, and opposed to the general objects and professed designs of the instrument. The maxim that "The law will make no construction to do wrong," should apply with peculiar force.

It is admitted that the supreme court of the United States have gone farther, in travelling out of the record, to ascertain the meaning and give a particular construction to parts of the constitution, than any other judicial tribunal in any civilized country ; and it is also admitted, that their practice has been altogether unwarranted by any known rules of law,

common sense, or justice. And that even they themselves, have not any fixed or uniform rule on the subject, except to make such rules as the particular emergencies of each case seem to require. Hence they often given conflicting rules of interpretation. Some times they intimate that they only intend applying certain rules to the *particular* case at bar, as in the case of Prigg vs Penn. In other words they assume the authority to go in any, and all directions for light, and aid when they please; and then shut themselves up in the prison of the letter when they please.

But it is said "That precise, legal maxims are not applicable to a constitution of government. In relation to such a subject, the natural and obvious meaning of its provisions, apart from technical rules, is the true criterion of its construction." But by examining all authorities on that subject, we can find no intimation that the instrument itself is to be abondoned to the vague teachings of "Collateral History, or National Circumstances."

It is fully admitted that, in the construction of that instrument, "Great regard should be paid to the spirit and intention thereof." But that *spirit* and *intention* should be gathered from the instrument itself. It is an instrument purporting to delegate sovereign power, to be exercised over a variety of subjects, affecting the lives, liberty and property of the whole people. It is entrusting the dearests, and most vital interests of community to the hands of men who may be disposed to abuse their trust, unless held within strict bounds.

Great latitude of construction would easily graft upon it powers which might be fatal to the liberties of the people. Give government general license to construe such an instru-

ment by such "Collateral aids," as they might please to call in, and there is no power which ambitious, and designing men might not attach. If we are to go out of that instrument to look for aid, in the journals, newspapers, publications, debates and histories of any particular time, who is to limit the extent of that judicial wandering? Who to determine what histories are to be consulted, on what particular portions are to be taken as true? Who is to say, "thus far, and no farther? Every court would be at liberty to call in such exterior aid, and from such sources as they should think proper. Your constitution would no longer be the simple, plain spoken instrument, adopted by the people; but it would be what the debates, journals, histories and idle rumors of the day would make it. You could no longer look to the plain, obvious meaning of the language employed; for, under some apparently blooming plant of liberty, would lurk a basalisk, concealed by dubious words and doubtful implications, to be developed into a fatal power, by the aid of "Collateral history," and "National Circumstances."

But this is not so. The constitution can be submitted to no such test. It is enough that the court may engraft upon it such implied powers as are obviously necessary to carry into effect the powers therein expressively granted. If, after doing this, it should be found that other powers are needed, it is safer to call upon the people to surrender, in express terms, the further powers, by amending their contution, than to let in a flood of powers by implication against which no furture barriers could be erected; and which is the same thing in effect, if by the ordinary rules of interpretation, the meaning of certain words and phrases are

still douftful, so that it cannot definitely be told what grant was intended, it is better to leave the doubtful power undeveloped, until the people, by amendment, can develope it, than to resort to such rules of interpretation for the purpose of developing it, as, when applied to other parts of the instrument and to other instruments of a like kind, put an end to all certainty and stability, and thereby break down all barriers against governmental usurpations.

But we are told that co-temporanious construction by congress, and by the early judges, ought to have great weight. Those who framed that instrument, did not understand the legal effect of the w rds used any better, than they are understood at the present time ; besides there is more danger of a misconstruction of that instrument by those who were cotemporary with its formation, than there is by those who have lived since. For, it would be reasonable to suppose, that courts would often be liable to give their supposed familiar understandings of that instrument, rather than the legal meaning of the instrument itself; we can readily perceivd how a judge, after having heard the propriety or impropriety of a particular grant of power, in the constitution discussed, and the consequences incident to that power pointed out, would be liable to follow his own particular understanding without closely adhearing to the letter and spirit of the particular clause.

But admiting that cotemporaneous construction is of great weight, and authority, it is not absolutely binding. The courts are at liberty at all times to examine into those constructions, and overrule, or modify them, as they may think proper. Precedent is not necessarily law. It may be received as evidence of what the law is, or is supposed to be, but is liable to be overruled and rebutted.

CHAPTER VIII.

Our Government, its origin, nature, objects, and powers.

Before entering upon a discussion of the various provisions of the *Constitution* of the United States, it will be necessary to examine into the nature of the Federal Government, as to its origin, objects, and powers.

ITS ORIGIN.

"We, the people of the United States, * * * * do ordain and establish this Constitution for the United States of America."

The Constitution of the United States, is not a compact between the several states in their sovereign state capacity, but the Constitution of *the people* of all the states, acting in their capacity as individuals. Hence the powers delegated by that instrument, did not come, second handed, though the states, but came directly from the people, with all the power and vigor of virgin sovreignty; and the contract was between each individual, and all the people of the Union; and between all and each. Not between communities of people, but between individuals. Hence the ordaining, and establishing the fundamental law looked to securing the objects mentioned in its preamble, against the petty despotisms of factions or states,—against the selfishness, or arogance of any man, or set of men. The whole people stood

up in their original, sovreign capacity; and, by virtue of the authority vested in them by the Almighty, declared what powers should belong to the national government, and what should be denied to the states. They made such grants of power, and imposed such restrictions as they thought proper, making the Federal Government supreme in all matters within the sphere of its action ; and when they had finished their work, they reserved to themselves and to the states, respectively the powers not delegated in that instrument.

Hence, when we find a restriction imposed upon the federal government, we must remember it was imposed by the people, not by the States ; and when we find a prohibition imposed upon the states, we must remember that it was imposed by the people, not by the Fedral Government.

Again the National Government, is peculiar in this respect ; it is a government of delegated powers, established for specific and limited purposes. It posesses no power to act upon any subject, unless that power has been delegated in express terms, or by necsssary implication. The constitution of the United States is their charter, defining their powers, and enjoining their duties, and no department of the National Government is at liberty to go beyond the limits prescribed in that instrument: and should they do, so, their entire action beyond it, would be of no binding force, or validity.

The state governments differ from the National Government in this respect. They do not derive their power to act, from state constitutions. The objects of those instruments are rather to define the manner of acting, by pointing out the method of organizing and maintaining their state govern-

ments, and imposing such restrictions upon the exercise of their governmental powers as wisdom and prudence dictate. The Federal Government can do nothing except what they are authorized to do by the National Constitution. The state governments can do every thing within the legitimate sphere of government, which they are not restrained from doing, by their Constitutions, or which power has not been delegated to the National Government. The Constitution of United States is one, delegating power. The Constitution of the State is one restraining power: and this difference must be kept in mind in construing those instruments.

The *object* of the National overnment was to protect the rights of each individual citizen against oppression at home and abroad. Against the encroachments of foreign nations, and domestic states: against lawless violence, exercised under the forms of governmental authority. Protection in the enjoyment of their natural, and *inalienable* rights, was the great paramount object of the institution of the National Government. Hence they declare, "that they *ordain* and *establish* that government, *to establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty*" *&c.* Without the National government, a state, or a portion of it, might be invaded by a foreign enemy. The people might be robed of their property, deprived of their liberty, and be reduced under absolute despotism, without sufficient power to defend themselves. Also a state might assume the authority to rob a portion of her citizens of their dearest rights. But by the formation of the National Government, they constituted themselves citizens of a Govern-

ment that had *power* to defend them, individually and collectively, against all such encroachments. And it will be found on a careful examination of the Constitution of the United States, that ample provision was therein made for the guaranty of all these rights to every individual, against the encroachments of Nations from abroad, or from the despotism of states at home.

Then as citizens of the United States, we stand mutually pledged to each other, to see that all the rights, privileges, and immunities, granted by the constitution of the United States, are extended to all, if need be, by the force of the whole Union.

What is it, then, to be a citizen of the United States ? It is to be *invested* with *a title to life, liberty*, and the *pursuit* of *happiness*, and to be *protected* in the *enjogment thereof*, by the guaranty of twenty millions of people. It is, or should be, a panoply of defence equal, at least, to the ancient cry, "*I am a Roman Citizen.*" And when understood, and respected in the true spirit of the immortal founders of our government. it will prove a perfect bulwark against all oppression.

We are fully aware of the objection which is taken to this view of the subjeet It is thought this view would lead to the extreme doctrine of consolodation. We have have not taken this view from any feeling of necessity on our part, to maintain the argument that the Federal Government is not authorized by the Constitution, to encourage, support or sanction slavery. We do not need it ; and make no use of it, except in the consideration of certain positive guarantys of the Constitution.

We hold that under the constitution, the Federal Government has full power to put an end to the institution of slavery, and that it is the duty of the government to exercise that power without delay: and we maintain this position without calling in aid, any of the positive guarantys of the Constitution for liberty.

We therefore say to those who object to this view of the objects and designs of the establishment of the Federal Government, you may reject it entirely: the argument is complete without it.

But before rejecting this doctrine, we would suggest a few considerations. Under the constitution of the United States, we all become citizens of the National Government by birth or naturalization ; and as such citizens are entitled to the benefits of all these guaranties for personal security and liberty.

The states can have no authority to deprive us of those benefits ; for the guarantys are a part of the supreme organic law of the land, made by a compact of all with each and each with all.

We do not hold that the Federal Government is bound to enact laws, to see that those rights are observed between citizen and citizen in the same state. It is peculiarly the province of the state governments to do that ; and they will be presumed to have performed that duty, except in those cases where, by positive enactments, they heve authorized a violation of these rights.

Our position then is this; that whenever a state shall by its legislation, attempt to deprive a citizen of the United States of those rights and privileges which are guaranteed to him by the Federal Constitution, as such citizen, such

legislation of the state is void. And that it is the duty of the federal judiciary to take cognizance of such violations, whenever any of the citizens of the United States are thus injured by state legislation.

This doctrine is not obnoxious to the charge of consolodation on the one hand, nor of state rights and nulification on the other.

With this view of the guarantys of the Federal Constitution, the right of citizenship is valuable to us while residing within the jurisdiction of the Federal Government. But the other view renders the National Government valueless to all citizens while at home. If its guarantys were only intended to protect the citizen against its own despotism, a vast majority of the citizens would have been more secure without a union government, than with it.

CHAPTER IX.

To recognize the existance of Slavery, "de facto," does not Sanction or Legalize it.

The constitution of the United States nowhere recognizes the existance of slavery as a legal, and valid institution. It did not intend to do it, and we cannot make it recognize its existance *de facto*, except by forced implication. For it is a well settled historical fact, that the framers of that instrument would not permit any word, or phrase to

have place therein, which even described the character, or expressed the condition of a slave. Therefore when we admit that the constitution of the United States recognizes the existance of slavery "*de facto*," we shall claim credit for liberality in giving much if not unwarranted latitude in the construction of that instrument.

But recognizing the existance of slavery "*de facto*," does not *legalize, sanction*, or in any manner guaranty its existance.

In 1772 the famous case of Somerset vs Stewart, was decided, by Lord Mansfield, in the Court of Kings bench, England. In his decission he held that slavery had no legal existance in England. He said, "So high an act of dominion must be recognized by the law of the country where it is used. The state of slavery is of such a nature that it is incapable of being introduced on any reason, moral, or political. *But only by positive law.* It is so odious that nothing can support it but positive law," (Howels State Trials.) Previous to this decission slavery had existed in England, "*de facto.*" The trade in men and women had constituted an important item of commerce. Laws had been passed authorizing their sale on execution ; and in fact every thing had been done, by all the departments of the British Government, to regulate, recognize, and santion human slavery that they could do, short of actually establishing it by "*positive law.*" In 1697, 8, 9, 10 William 3rd., chap., 26, the parliament of Great Britian had recognized its existance, by encouraging the slave trade, as "beneficial," and "advantageous," to the kingdom, and spoke of the importation of Negroes into England, where they were held as slaves. The act itself was entitled, "An act to settle the trade to Africa."

Again in 1749 the Parliament of Great Britain passed an "Act for extending and improving the trade to Africa" commencing with this preamble, "Whereas the trade to and from Africa, is very advantageous to Great Britain, and is necessary for the supplying the plantations and colonies thereunto belonging, with a sufficient number of Negroes at reasonable rates, and for that purpose the said trade ought to be open and free to all his Majesty's subjects. Therefore be it enacted &c."

Again, it was among the early complaints of the colonies that the government of Great Britain had forced slavery upon them, by their Parliamentary enactments. Yet notwithstanding all this, it was held by Lord Mansfield, that slavery had *never had* a legal existance in England. That all their enactments, regulating the trade, encouraging it &c., had never sanctioned, or legalized it. And this decision virtually put an end to slavery in England. It was recognized by all "*as sound law,*" and none were disposed to litigate the question further. So then we see that to refer to an institution, or even to pass laws regulating, and encouraging it, does not necessarily sanction, or legalize it.

In asmuch then, as we have seen that to recognize the existance of an institution "*de facto,*" does not necesarily legalize it, or give any intimation as to its legal character, we are now prepared to proceed with the examination of the several provisions of the constitution, supposed by some to establish, or guaranty slavery.

CHAPTER X.

Our Constitution neither sanctions, legalizes, nor guarantys Slavery.

We now proceed to enquire into all those provisions of the Constitution, of the United States, which are said to favor slavery; and shall maintain the following propositions :

1st.—The constitution nowhere guarantys the existance of slavery, in any part of the Union, for a *single hour.*

2nd.—It nowhere sanctions slavery directly or indirectly.

3rd.—It nowhere recognizes the legal existance of slavery, in a single state the Union.

4th.—It nowhere restrains the Federal Government from extending to all men, black and white, all the guarantys of that instrument, for the personal security, and liberty of the citizens of the United States.

5th.—Under the general provisions of that instrument the Federal Government have *full,* and *complete* power to put an end to slavery in the United States at pleasure; and it can never fulfil the designs of its creation and satisfy the anticipations awakened until it does so.

We shall argue these propositions from the letter and spirit of the constitution; applying the most liberal rules of construction, and shall fortify their correctness by refferring to the history of the formation of that instrument. It will

be admitted that slaves, and slavery were referred to, in every clause of that instrument, where the pro-slavery interpreters insist they are especially referred to.

REPRESENTATIVE CLAUSE.

The first clause of that instrument referring to slavery, or rather to a class of persons supposed to be slaves, is the 3rd clause of the 2nd section, of the 1st article of the constitution of the United States, which is, "Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to serve for a term of years, and excluding Indians not taxed, three fifths of all other persons."

The design of this clause was to fix upon a ratio of representation among the several states. It is important to notice that it was a *state representation* which this clause was determining upon; not an *individual* representation. The state governments recognized several classes of persons, under their organizations, and the *people*, not the Federal Government, refused to permit certain states to have a full representation in the Federal Government so long as certain *classes* as such under the state governments had an existance. It was a penalty imposed by the *people* upon those states, for permitting any class of persons, under their state governments, to remain in any other character than free. It was not designed to express any approbation of an institution which sought to rob men of the rights of freemen. But on the the contrary, it was designed to express their *dis*approbation. It was not designed to strengthen the political power, and influence of those states, where slavery existed,

or might continue to exist, but on the contrary to *weaken* their power and influence. It was not designed to legally sanction, or recognize, as a valid, and binding institution, slavery. but on the contrary to condemn its very existance, "*de facto*," in the states; and offer an inducement for all to get rid of it, that they, by so doing might increase their state representation ; and, at this very time, the south are abated some sixteen members in the Federal Government for permitting the institution of slavery to continue among them. Then, so far as this clause goes, it condemns in its spirit, the institution of slavery ; and in its letter, it offers no sanction, or guaranty whatever. It does not even say, except by implication, that there are any persons of the last description, or rather, not included in the *forgoing* descriptions. The most that it says is that *should* there be any not included in the forgoing description, then, only *three fifths* of *their* number, should be estimated. But it does not pretend to say there are any such, or if there are, that they are legally, or justly held in that condition for a single day, much less does it, in express terms, or by any fair implication, bind the National Government to sanction, or uphold any such institution. Nor does it directly, or indirectly restrain the Federal Government, in the full exercise of all its powers, to extend the blessings of "liberty" to all persons within its jurisdiction. Nor was it designed that it should restrain the action of the National Government. The most that can be said is, that by a *forced implication*, it recognizes the existance of slavery, "*de facto*." And the history of the times tells us, that the framers of that instrument did not intend to do more than that : nor even that, by the remotest implication possible. Hence they would

not admit the term "slave," or "slavery" into the instrument; nor any other language descriptive of slavery. They said *they would not* recognize it, they would not sanction it. And there was not a member of the convention that asked, or desired them to do so. But we have already seen, that to recognize the existance of slavery, "*de facto*," does not sanction, or legalize that institution. Therefore instead of this clause of the constitution *sanctioning*, or guaranteeing slavery, in letter or spirit, it *condemns* it in the strongest terms, and imposes a penalty on those states which allow it to continue among them.

"MIGRATION OR IMPORTATION" CLAUSE.

The next provision of the constitution, to which our attention is called, is the 1st clause of the 9th sec. of the 1st article, which is :—

"The migration or importation, of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight, but a tax, or duty may be imposed on such importation, not exceeding ten dollars for each person."

It will be observed that this clause is entirely restrictive in its character, It is not one conferring power, but on the contrary restraining the exercise of certain powers *already* conferred. When we remember that the national government is one of delegated powers merely, and that it can exercise no powers, not delegated to it by the constitution, we at once infer that this 9th section, would have been altogether unnecessary, had not the constitution delegated to congress the power to *prohibit* the migration and importation of certain persons into the states, in some other clause of

that instrument. Accordingly we find in the 3rd clause of the 8th section of the 1st article, "That congress had power to regulate commence with foreign nations, and among the several states, and with the Indian tribes," and that this 1st clause of the 9th section was designed to restrain the exercise of that power, on the part of congress, for the term of twenty years, which restriction expired forty one years ago, last January.

It has been objected to this clause of the constitution that, by it, the national Government authorized the slave trade for the term of twenty years. But this objection is altogether unfounded. The National government never authorized the States to buy or sell a single slave, at home or abroad, for she had no such authority to give, nor did she ever yield to the states any such authority, for she never had any such authority to yield. The Federal Government had no authority on the subject, further than the people, in that constitution, saw fit to give her. She could only receive such powers, and subject to such restrictions, as the people saw fit to grant. She was not an institution *imparting* power, but *receiving*. She is not to be held responsible for what she did not receive, but only for the proper exercise of those powers which she did rec eive.

Again it is objected that the National Government, in that clause, recognized the rightful power, under the state governments to buy and sell human beings.

This is not so. Neither the letter, nor spirit of that clause recognizes any such thing. It does not attempt to say whether the persons migrating, or being imported into the states, shall not be as free to act and move as any other class of persons. It does not even hint at their condition

in the states, either in express terms or by any fair implication. It only says that the states, may admit such persons among them as they see proper, without the interference of Congress prior to 1808. But it does not say in any manner whatever that these men may be robbed, murdered or dealt with in any manner different from any other citizens of the state; and it did not intend to say any such thing. But even if it did contemplate this class of persons, as slaves under state laws, that, we have already seen does not either sanction, or legalize their slavery. Nor does it admit the lawful authority of the states to make them slaves.

But it has already been remarked that the restrictive operation of this clause ceased fifty-one years ago. And the power of Congress over that whole subject is now as plenary, as though that clause had never been inserted. But nevertheless, there is intrinsic value in that clause yet. It contains a construction put upon the 3d clause of the 8th section of the 1st article, by the framers of the instrument themselves. We learn from this 1st clause of the 9th sec., what powers *they* understood that 3d clause of the 8th sec., conferred upon congress—to wit, to abolish the *foreign* and *domestic* slave trade. It has long been contended by abolitionists. that the 3d clause of the 8th section gives congress the power to abolish the interstates slave trade, as well as the foreign; and it is impossible for any lawyer to deny that it clearly gives congress as much power over the one as the other. But nevertheless, it has been denied. This 9th sec., however would have us understand that congress had as much power to prohibit the "migration" as the "importation" of slaves, if the persons refered to are slaves. It has been understood that the term, "importation" referred

to bringing in slaves from foreign states or Nations, and that "imported" was used signifying those who were thus brought into the United States.

But the term, "Migration," also refers to the same class of persons: and if one meant slaves, so then did the other. The term migration signifies a "change of place," that is moving from place to place. Now as the terms are used in reference to the whole United States, "importation" means being brought into the Union, and "migration," moved about from state to state in the Union. Hence, also, a tax might be imposed upon persons "imported," but not upon persons "migrating." So then we learn from this 9th section that the framers of the constitution understood that the 3rd clause of the 8th section conferred upon congress the power to prohibit, as well the *interstates*, as the *foreign* slave trade.

CHAPTER XI.

The Fugitive Clause.

The next clause of the constitution that claims our particular attention is the 3d clause of the 2d sec. of the 4th art. which is: "No person held to service, or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein be discharg-

ed from such service, or labor, but shall be deliverod up on claim of the party to whom such service or labor may be due."

Slavery is so odious in the eye of the law, that it can only exist "*in ivitum.*" A man can only be considered a slave while he remains within the jurisdiction of the authority that makes him such. The moment he escapes beyond that jurisdiction, his legal chains fall off, and he assumes his native, original manhood. We mean by this, he becomes a freeman in the eye of the law. This was the case with the thirteen colonial states. Each had their own regulations, chattleizing men. But they were of no force, or validity beyond the limits of their respective jurisdictions. Consequently if a slave from Virginia, escaped into Pennsylvania, he thereby became free in the eye of the law, unless by a comity between Pennsylvania and Virginia it was agreed that he should still be considered as subject to the jurisdiction that made him a slave. This comity existed between the original thirteen states, prior to the formation of the Federal Constitution, as all of them were slave states, and each sovreign, having full power to enter into alliance with each other, for all matters of comity, &c. These states, or rather the people composing these states, were about to enter into a union government, into which a portion of their original sovreignty was to be merged: among other things the right to enter into any treaties, alliances, or confederations with each other, aside from the general union was to be given up. Beside, the feeling in many of the states was such, that the people were indisposed to continue slavery among themselves, or tolerate it, in others: and there was very little inclination among a portion of the states, to con-

tinue the old line of comity by which the slave laws of one state were to be recognized in other States.

With the exception of South Carolina and Georgia, there was no serious objection to discontinuing that practice. But these States, insisted upon it, and refused to come into the union, unless this comity was continued. Now it is worthy of notice that these states apprehended no danger from the action of the *General Government*, at least expressed no such apprehension. It was only against the action of the *States*, they wished to guard. Hence, the clause, which they sought to insert into the constitution, contained no restriction upon the Fedearl Government, nor did it enjoin any duty upon them. It was only restrictive of state action.

There was much opposition to the introduction of this and other clauses, relating to the subject of slavery. It was the feeling and determination of a large portion of the convention framing the Constitution, that slavery, as such, should receive no favor or support at their hands even for the shortest period. And, as has before been observed, they would not admit into the constitution any word, or phrase, which by any *legal* rule of construction, could be made to mean slavery. This was not owing to carelessness or neglect. It was not because they had not suitable and proper language to express slavery; but it was the result of an open deliberate and expressed design on their part.

Keeping these things in mind we will now proceed to examine this, so called, " fugitive clause" " No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such labor or service" &c.

The plain English of this, is, that the state into which the fugitive escapes shall make no law, or adopt no regulation, by which to prevent the master, or owner from reclaiming his slave. But this clause imposes no restriction upon the action of the Federal Government. It leaves that Government as free to act, as though that clause had not been introduced into the constitution. And the the truth is, it was not *intended* to impose any restriction upon the action of the Union Government. Then, so far as this clause is concerned, if the constitution *has*, in any of its *other* clauses, imposed any duties upon the National Government, inconsistent with the continuance of slavery, this clause can never be used to restrain its action.

But it is said, "They shall be delivered up on claim." Who shall deliver them up? *Who* is compelled at the sound of the slave hunters horn, to start in pursuit of the panting fugitive? The Federal Government? The state government? or the Citizen? Who are bound, by this clause, to become the human blood hounds! The plain simple answer is, *no one*. He is *to* "be delivered up on claim." That claim can be preferred against no one who has not the fugative in his custody, or his control. The simple meaning is, if the fugative is brought before the authorities of the state, "by Habeas Corpus," or otherwise, suing for his liberty, and the owner or master establishes his legal claim to his labor or service, under the laws of the state from which he escaped, that the court shall not discharge the fugative, but shall deliver him over to the claimant, and that is all it does mean. It is all the duty, or restrtction it imposes on any government, or any person.

But it is said that *the Supreme court* of the United States

have decided this question, and declared this to be the legal meaning of the clause, that the Federal Government should make such laws and adopt such regulations as were necessary to carry into effect, the effort of the master, to reclaim his fugitive slave.

In reference to the above it may be remarked in the first place, even if the Supreme Court have made such a decision, it by no means follows that such is the law. Decisions of Courts are not, necessarily law. Precedents, at most, are but evidence of what the law has been held to be, on certain points; but they are liable to be overuled by the same, or other courts, and are never considered conclusive. If, on examination, it is found that courts, from error, prejudice, or misapprehension have mistaken or mistated the law, in giving any of their decisions, no one questions their authority to disregard such precedent, which would not be the case if precendent was, necessarily law. The truth is, courts do not treat precedent as law, absolutely, but merely as authoritative evidence of what the law has been held to be. Hence they always claim, and exercise the authority, to regard, or disregard precedent, as to them appear right and proper: and nothing is more common, than for courts, to overturn, and disregard even long established precedents, where it appears to them, those precedents have been established upon false and erroneous positions. By so doing they virtually declare that those precedents were never law, although they had been received as such.

In the next place we will consider what the Supreme Court have decided in this case, and examine the validity of certain parts of their decision.

They have decided that this clause is restrictive of state

action, not Federal action. That by the provisions of this clause the States are precluded from all authority to legislate upon the subject of escaping fugitives, *pro or con.*

They have decided that it is no part of the duty of any officer of the state government, or any *citizen* of a state, to aid the claimant in arresting, or securing the fugitive, or doing *any* thing in aid of that provision.

They have decided that no claim, or demand, *can* be made upon any officer, or citizen of the national government, to assist in the capturing and bringing before the proper tribunal the escaping fugitive.

They have decided that the claim can be made upon no one, until after the owner, agent, or attorney has seized the fugitive, and brought him before a competant tribunal, and presented his proofs, &c. Not till then, is an obligation imposed upon any one to deliver up the fugitive. So we see from the construction of the Supreme Court of the United States, that this clause of the constitution imposes no obligation on any one who has not the custody, or control of the fugitive. Hence so much of that clause as says, the fugitive shall be delivered up on claim, &c., when construed with the other parts of the same clause can only refer to those who are detaining the fugitive by virtue of state laws and state regulations, after the validity of the master's claim has been established. But if there should be any *national* law or *national* regulation, or any defect in the master's title, under the law, or regulation of the state, from which he escaped, by which he would be discharged from such labor, or service, there would be no obligation imposed upon *any* one to deliver him up.

Again the Supreme Court of the United States, in the

case of Prigg vs. the commonwealth of Pennsylvania held that the States had no right to pass *any* law, or make *any* regulation whatever on the subject of escaping fugitives, because, should the States enact any law, or make any regulation, for the purpose of trying the fact whether the fugitive owed labor and service, under the laws of the state from which he escaped, whereby the fugitive would be detained from the immediate possession of the master and from his command of his *immediate* services he would thereby be discharged "*pro tanto*" from the labor and service due. "Because, say they, "the question can never be "*how much*" he is discharged from, but whether he is discharged "*from any*" by the necessary operation of a law, or regulation of the state."

Now the whole force of this reasoning is based upon the position that "the question can never be *how much* the fugitive is discharged from;" that it cannot be a question of *degree* of discharge; for if it can, this objection to the interference on the part of the States, for the purpose of trial, will cease. Then taking this position of the court to be true, that the question can never be, "*how much*" the fugitive is discharged from, it follows that the power that can discharge "pro tanto," can discharge entirely. But it is affirmed by the Court, that the National Legislature have authority to adopt laws and regulations by which to try the validity of the masters claim, and to detain the fugitive for that purpose; and thereby discharge him "pro tanto" from his masters service. Now, then, as the question can never be one of *degree*, the National Government has authority to discharge entirely.

Then, if the position taken by the Supreme Court be

correct, the Federal Government has as much authority to discharge the fugative *entirely* from the service of his master, as it has to detain him for investigation. And if that position of the court be not correct, the States have authority to enact laws, and adopt regulations for trying the fact, whither the fugitive owes service or not.

But it is further held by the Supreme Court of the United States that Congress has the exclusive power to legislate upon this subject. That the States have no authority to adopt *any* regulation by which to try the fact whether the fugitive owes labor or service, because, by allowing the state authorities, a right to investigate the title of the claimant, they might hinder, embarass, and perhaps defeat his title. Hence, they say, any regulation of the States to try the question of the fugitive owing service, or labor would conflict, or might conflict with this clause; and whether the discharge was right or wrong would equally be in violation of this provision.

If this position of the Supreme Court be correct, then the writ of Habeas Corpus is suspended in any and all of the States of this Union at the pleasure of a slave claimant. Any citizen is liable to be taken from his home, at any time, without *ang* legal process whatever, and draged into a remote part of the state, before a district or circuit judge, without any notice, without any process for obtaining witnesses, without a jury, without any presentment, or indictment, without any notice of the nature, or cause of accusation, without counsel, among strangers without means, to be tried upon a question affecting his personal liberty for life, while the United States Constitution guarantees to him

"that he shall not be deprived of life liberty," &c., "without due process of law" and "that the writ of "Habeas Corpus" shall not be suspended except in cases of rebellion or invasion" &c. A grant of such power to Congress, as *this* must be conveyed in some *other* way than by doubtful implication. If a state under this provision of the constitution is so entirety disrobed of authority as to be compelled to sit by and see these and the like enormities perpetrated upon its citizens, it is high time it was *known*—and *when known*, the time for a *second revolution* will have arrived, greater in cause and importance than the first.

The enormity of this position is fearful. It is no less than this, "that whenever a stranger shall appear among us, and lay claim to a human being as his property, (no matter who that being may be, whether one of our wives, or daughters) the power of the State is stricken down. No man is allowed to interfere at his peril—but must stand by, and see them dragged away, wherever the claimant may direct—because the Supreme Court of the United States say, that this provision of the constitution vests the power to investigate claims of this kind, *exclusively* in such tribunals as Congress shall appoint. The debauchee lusts after your wife, or daughter, and under the pretence that she is a fugitive from labor, owing him service and labor, seizes her without process, and carries her off in pretended search of a district, or circuit judge—and while this is going on, all the authority of the state is suspended; they can afford you no relief, they can give your wife or daughter no protection, for by this provision of the constitution, all authority to *question* such a claim, is vested in the Federal Government. *Are* the proffession prepared to sanction any such doctrine? The

people never conferred any such power upon the Federal Government, either expressly, or by implication.

Again, the *Supreme Court* think, that the provision of the constitution, relating to fugitives from justice, will throw some light upon the construction of the clause relating to fugitive slaves. But we are unable to understand, from the reasoning of the court, that they derived any particular aid from that source. The two clauses bear no possible resemblance to each other. The one relating to fugitives from justice, is one conferring power and enjoining a duty, for the ends of public justice, by securing to a state the right to demand and have a criminal, who had violated its criminal code, and escaped beyond its jurisdiction. It provides that the chief executive of the state, from which the criminal has escaped, shall make a demand upon some one in the state to which he has fled; and it is proper to infer that the demand shall be made upon some one who is able to comply.

Again, this clause provides for making a demand, which cannot be done unless there is some one upon whom a demand is to be made; and as this clause does not point out, upon whom, it is the province of congress, under the last clause of the 8th sec. of the 1st art. to determine by law, upon whom the demand shall be made.

Again this clause relates to a public duty, one that appertains properly to the State as such, to perform, in protecting the body politic, in which all have a direct interest as citizens.

On the other hand the clause relating to fugitive slaves, is not one delegating power, but one the contrary is altogether restrictive in its character. It delegates no power to the

Federal Government, or to the State. It only restrains the States from passing any law or making any regulation which shall operate to discharge a fugitive from labor. It authorizes no demand to be made upon any one, and therefore enjoins no duty upon any one to act. Its whole injunction is, that the States shall pass no law, or make no regulation which shall discharge the fugitive.

Again this last clause does not relate to the performance of any public duty by any one. It is only a private, individual transaction. An individual is pursuing his claim, for private property, the same as though he had lost his horse, or ox; and only asks that the state into which his property has escaped shall not, by any law, or regulation therein, interfere to deprive him of it. He is as competent to retake his slave without any aid from government, as he woule be to retake his horse, provided there was no interference. And government is as much out of the appropriate sphere of its action, while entering upon the task of hunting up runaway slaves, and returning them to their masters, as they would be in hunting up runaway horses or cattle, and putting them back into the pasture: and all of their action, tending to guard the interests of the master in re-capturing and keeping his slave, is very much like what it would be, should the government, after putting estrays back into the owners pasture, take upon themselves the trouble and expense of repairing fences to keep them from again breaking away.

Again, if a thief steals A's horse it is the business of the *government* to find the thief; and it is his business to find the horse. The government will pay for prosecuting the thief for the crime, and the prosecution will be done in their

name. But if A would recover his horse he must prosecute in his own name, and foot his own bills. The difference is this; it is the business of the government to punish the criminal, and prevent crime, and *all* have an interest in that. But it is A's business to retake his horse, and the public have no interest in that matter.

Again it is in pursuance of the professed objects, and designs of the Constitution, for the government to provide for the apprehension and punishment of criminals, as being necessary to guard the rights and liberties of the citizen: but it is contrary to the professed design of the constitution, and entirely foreign to the objects for which the Government was instituted, to employ its functionaries to hunt down men panting for liberty, and fleeing from oppression. Therefore we say, this clause of the constitution does not, purport to delegate any power to the Federal Government, either expressly, or by any necessary implication; nor does it restrain that Government, in the exercise of any powers, otherwise delegated. It imposes no duty upon them. It merely restrains the States from passing any laws or making any regulations interfering with the ascertained rights of the claimant. The truth really is, this clause never contemplated any other action by the National Government, than that the principles of citizenship, given by the Constitution, should be secured to all within its jurisdiction; and no other powers can be exercised by them, on this subject, without trampling in the dust, other provisions of the constitution, adopted for "establishing justice" and securing the "blessings of liberty."

In this view of the case, the act of 1793, is undeniably, unconstitutional and void. That certain provisions of that act

are unconstitutional, even if congress has power to legislate on that subject, cannot well be questioned. That part of the act, which authorizes the owner, or his agent, to seize and hurry away without process the supposed fugitive is flatly in conflict with the 5th article of the amendments of the Constitution. It is no answer that the seizure is only for a temporary purpose. The same authority that can authorize the violation of a provision of the constitution for a short time can also do it for a longer time.

That authority which can make it lawful to arrest and detain without process, for one purpose, can also make it lawful to arrest and detain without process, for another purpose, and so on for any and all purposes, known to the constitution. And that authority which can make it lawful to hold in custody without process, for one day, can also, for one week, one month, one year &c. And that same authorty which can make it lawful to drag a man, without process, from one extremity of the state to another, can make it lawful to drag from one end of the Union to another; and the same authority which can make it lawful to thus subject *one class* of citizens to the deprivation of constitutional rights, can make it lawful to subject *all classes* to the same deprivation ; for the constitution knows no *class* among its citizens.

But again, " They shall not be discharged in consequence of any law, or regulation therein &c," that is they shall not be discharged in consequence of any law, or regulation of the state, to which they escape. We have before observed that the law of slavery is "in invitum," and cannot legally extend beyond the limits of that jurisdiction that makes the man a slave. When the enslaved is so fortunate as to

escape the jurisdiction of that power which enslaved him, in the eye of the law he has gained his liberty—not by virtue of any law that sets him free—but by the limits of that law by which he was enslaved. Hence he cannot be said to be discharged by virtue of any law, or regulation of the state to which he escaped, for it is by virtue of his own natural and inherent right to liberty. This of itself, in the hands of an honest, law abiding judiciary, would be sufficient to protect the fugitive after he had escaped into another jurisdiction than the one that had made him a slave.

The language of this clause of the constitution, and the history of the transaction itself, demonstrate that the framers of that instrument never sought, or intended to do more by this clause, than to interdict state action, and regulation from discharging the fugitive. And further-more, it was their intention, and determination to do it in such a way as not to signify, upon the face of the instrument, that slaves were intended. Now if they neglected so to construct that clause as to prevent the fugative from being discharged, by virtue of his natural and inherit right to freedom, their neglect is not to be aided by a loose latitudinarian construction, for the sake of making him a slave. The principle is, that "The law will make no construction to do wrong,"—"if the legislature will enact a law against natural justice, &c., they shall express their intention in language so clear and explicit, that it will admit of no other meaning."

But it is said that the intention of the people must be carried out. True. But what was that intention? How is that to be ascertained? By the language they used to express that intention? The law says the intention of the

parties to a written contract shall be enforced; and it further says that their intention is just what the words used in the writing express. The law says the parties understood the meaning of the language they used, and the force and effect of it: and they have no right to complain if the courts take them at their word.

The law also presumes the legislature to mean what they say; and especially when they attempt to enact laws touching the life, or liberty of the subject, even for crime, the law will not presume they meant any more than they said, "*Ita lex scripta est,*" * is the maxim, as also "*Stricti juris.*"†

Who ever heard of an enlighted court construing a criminal statute by any other rule than that of "*Strict construction?*" Therefore we say, when the people, in framing this organic law of the land, by their language only restrain the States from passing laws, and adopting regulations by which the fugitive was to be discharged, the courts have no authority to say they intended more than they said—that they did not intend to extend to the panting fugitive the benefits of that inherent right to freedom which he possessed, and which would reinvest him, the moment he escaped the crushing weight of that power which enslaved him.

Let him have his liberty then, and he is not discharged in consequence of any law, or regulation of the state to which he escaped, but by virtue of the end and limit of that law by which he was enslaved. Now this must be a just conclusion, unless the court go beyond the fair and necessary meaning of the language used.

* Thus the law is written. † Strict Law.

We have already considered, that the expression "He shall be delivered up on claim &c.," imposes no duty, or obligation upon either the National or State Governments, or upon any of the citizens to aid the master in recapturing his slave. That the claim could only be made upon one who detained him from the claimant, by virtue of some state law, or regulation, or by virtue of no law at all: and he shall be delivered up when it shall be made to appear, by the claimant, that the fugitive owes him labor and service under the law of the State from which he escaped. But if on examination it should be found that under the law of the State from which he fled, he does not owe labor and service, he is not to be delivered up.

But from the very nature of the law of slavery the fugative cannot owe labor and service under it, any longer than he remains within its jurisdiction. Therefore at the time he is found in another State, where that law enslaving him is not in force, he cannot be said to owe labor and service under the law of the State from which he escaped.

It may be said that the above construction would defeat the manifest object of that clause &c. But by what right, and by what authority, can any one say that? The language of the clause necessarily imports nothing different, than the above construction gives it. And the history of the times informs us that the framers of that instrument would not use any language in this or any other clause that, upon its face would legally import the idea of a slave, or slavery. *Madison* said expressly in the Convention, "that they *must not* admit the *idea* into that instrument." *Morris* said "he never would consent to lend any sanction to slavery in the Constitution, and others made similar declarations. Then by what authority can any man say they intended

that clause to accomplish what they refused to express. The word "slave," was at first introduced into that clause, but afterwards stricken out because they would not disgrace themselves, and the people of the Union, by such a blot upon their national character.

But farther, this clause of the constitution was an after thought, and was not found in the original draft. It was put in, unwillingly by a large majority of the Convention. It was finally diluted, and made as weak as possible, and yet satisfy South Carolina and Georgia. And, from the his- of the times, it cannot be doubted that the people adopting that instrument, desired that *this* as well as certain other clauses, should never be strained one hairs breadth beyond the strict letter of their meaning. And if, on examination they should be found totally inefficient, so much the better, and as *Lord Tenterden*, Chief Justice of the kings' bench said, "Our decision may, perhaps, in this case, operate to defeat the object of the statute; but it is better to abide by this consequence, than to put upon it a construction not warranted by the act, in order to give effect to what we may *suppose* to be the intention of the legislature."

CHAPTER XII.

Citizenship.

What is it to be a citizen of the United States, and what are the necessary incidents to citizenship?

The term *citizen*, under our constitution is analageous to the term *subject* under the British Government, and carries, with it the duty of obedience, and support, and the right of protection on the part of the citizen. But aside from this the government of the United States was formed by the people, acting in their original sovereign capacity. and is a compact of all with each and each with all, to secure the guarantees of the constitution.

The government was designed for the purpose of forming a more perfect union of the people of the several States, to establish justice. provide for the common defence, and secure the blessings of liberty to themselves and their posterity. In the formation of that government, they took into their own hands all the powers that could rightfully belong to any government, and disposed of them as they, in their sovereign pleasure thought proper. They arose above the authority of State governments, as such, and took from them such powers as they deemed necessary, and conferred them upon the Union government. They clothed the National Government with such powers as they supposed would be sufficient to secure each citizen in the enjoyment of his natural rights.

An attentive examination of the Federal Constitution will demonstrate that it was the intention of the founders of the Union Government, to provide for the protection of the citizen at home and abroad, against all oppression. At home he was to be protected against all encroachment upon his rights, by the legislation of states, and abroad he was to be protected against unlawful oppression from individuals, and foreign powers. To secure to each citizen the blessings of personal liberty, they provided that all persons under the jurisdiction of the Federal Government should have the right to petition government for the redress of their grievances; that they should be permitted to keep, and bear arms; that their persons &c., should be free from unreasonable searches, and seizures; that no one should be held to answer for any capital, or other infamous crime, unless upon presentment, or indictment of a grand jury, except in certain cases where the same could not be had; nor should life, or limb be twice endangered for the same offence; nor should any one be compelled to give testimony against himself, nor be deprived of life or liberty &c., without due, legal process; and that in all criminal prosecutions, the accused should enjoy the right to a speedy, public trial by an impartial jury of his country, and should be informed of the nature and cause of the accusation; and should be permited to confront face to face, the witnesses against him, and have compulsory process to bring into court witnesses in his behalf; and should have the assistance of counsel for his defence;—that he should not be subject to excessive bail, or fines, nor to cruel or unusual punishments.—And to further secure all these they provided that the privileges of the great writ of liberty, to wit, the "Habeas Corpus" should not be

suspended, except in cases of rebellion, or invasion, when the public safety might demand it.

Again the framers of the Union Government also made provision for the protection of the property of the citizen, so far as it was necessary beyond the State governments, by providing against forfeitures; and that private property should not be taken for public use without adequate, and just compensation—that courts should be open for the redress of grievances—that in all cases at common law, when the amount in dispute exceeded twenty dollars, the right of trial by jury should be maintained.

They provided for the organization of a National Government to develope and enforce these principles. They established a National Legislature to enact all laws necessary to secure the end contemplated. They provided for the appointment of a National Judiciary to adjudicate upon, and declare the application of those laws. They provided for the election of a National Executive, clothed with the power of the Nation, to see that the laws were enforced. To secure the protection of the citizen, and his interests abroad, they provided for the appointment of Ambassadors, and Ministers who should reside in the various governments, with which the American people should have commercial intercourse; and for the establishment of all those various relations that naturally and necessarily must exist between commercial nations: and a careful examination of the Federal Constitution will demonstrate that every precaution was taken to give the National Government all necessary powers to protect every citizen at home and abroad.

Again it must be remembered, in looking at the nature and policy of the National Government, that it looked to the

protection of *individuals*, because there were none but *individuals* to protect. There was no such thing as a government independent of the people. Nor was there any such thing as government interests, independent of individual interests. The government belonged to no class of citizens; it was the property of all, and designed for the equal protection of all, individually and collectively.

What, then, are the privileges and immunities which the American citizen has a right to demand of the Federal Government? The answer is, he has a right to demand, and have full and ample protection in the enjoyment of his personal security, personal liberty, and private property; protection against the oppression of individuals, communities and nations; and the Nation stands pledged to him, as he to them, to defend him in the enjoyment of these rights. His civil obligations to defend his country are based upon his country's obligation to defend him. Were it not for our relations growing out of this National Government, the citizens of Ohio, would be under no legal obligation to defend the citizens of New York, should they need our assistance. But under the Federal Union we have become citizens of one, and the same government. We have a National relation to each other, which is of a higher character, and into which state relations, for certain purposes, are merged; and to which, when in conflict, state regulations must yield. As a citizen of the United States, residing in Ohio, we are bound to protect and defend the citizen of the United States residing in New York; and in this obligation, is to be found the immunity of an American citizen. When the liberties of a citizen are invaded, either by a domestic, or a foreign force, we are all bound in our National character to af-

ford them protection. We are bound to secure to all the benefits of a "Republican form of Government," thus protecting the citizen against the despotism of a State. And when we look over the guarantys of the Federal Constitution for personal security, liberty and property, and remember that they are the standing guarantys of a Nation, numbering twenty millions, why should not the American citizen feel that his liberties are safe, especially if he can rely upon the integrity and good faith of the government in enforcing those guarantys ?

This then is the conclusion; to be a citizen of the United States, is to be brought within the protection of twenty millions of people, each of whom stand pledged under the constitutional government of the Union to defend all, and each in the enjoyment of those natural and inalienable rights which the Declaration of Independence asserted, the war of the Revolution maintained, and the adoption of the Federal Constitution secured.

The next question very naturally suggested is, *how do men become citizens of the United States?*

1st. The answer is, all persons who had a legal residence in the country at the time of the Revolution, and at the adoption of the Federal Constitution, and who were not, by that instrument, excepted, became citizens of the United States. Story Com. Con. 3v. 571.

2nd. All persons, born within the jurisdiction of the United States, since the adoption of the Federal Constitution, became citizens by birth.

3rd, Foreigners, by birth, coming into the United States to reside, by complying with the provisions of certain naturalization laws, passed by congress, become citizens by naturalization.

Thus persons now become citizens of the United States; and, as such, are entitled to the benefits of the standing guarantys of the constitntion for personal security, personal liberty, and private property.

The first position, that those, who legally and bona fidely resided in the United States, at the time of the adoption of the Constitution became citizens by its adoption, is proved by the language of the instrument itself.

It commences thus, "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves, and our posterity, do *ordain and establish this Constitution* for the United States of America."

We do not quote this preamble, as conferring any power, or making any special grant to the Federal Government; but as showing *who* made these grants, and for what purposes they were made. Thus having declared, in the instrument itself, whose constitution it was, there is no authority any where vested by that instrument, to question it. It was a constitution "*ordained and established" by the people*, not by the States, not by the white people, or black people, not by the rich people, or poor people; not by the voting or non-voting people; not by one class, as opposed to any other class in the United States; but expressly, and emphatically by *all*, who, in the common acceptation of the term, might be denominated, *the people* of the United States. There were no citizens, or aliens, to it, before its adoption, but all became citizens by its adoption. It was the written voice of the people, speaking from the throne of their own natural, God given Sovereignty. A voice, rising in sublim

grandeur above the authority of all state constitutions, ordaining and establishing an organic, and fundamental law, to secure the people of the United States in the enjoyment of those rights which they, in their Declaration of Independence, had promulgated to the world, as the natural and inalienable right of *all* men.

No class of people, who were then bona fide residents of the United States can be excepted from the term, "We the people &c," for the plain reason that the term is general and necessarily includes all of that description. There were those then residing in the Union who were subjects of other governments and foreigners, to all state institutions. They had however selected this country for their home. And by this act establishing the Federal government, their relation and allegiance to all foreign governments ceased, and they at once became citizens, and were brought within the protection of the United States. At the time of the American Revolution, all were alike subjects of foreign jurisdiction; and when by the Declaration of Independence they renounced that allegiance, and proclaimed their Independence, and, by the successful termination of the war of the Revolution, established it, they then stood upon an equal footing with each other, subjects of no government, except such as they had established, or might thereafter establish; for it was upon that hypothesis they revolted—fought—conquered and demanded recognition from the different nations of the earth. Hence, theoretically at least, all were free and independent. All had a right to participate in the formation of a National Government for their mutual defence and protection. All equally needed it; and, by American doctrine, were equally entitled to it. Hence,

then, we affirm that the term "*We, the people &c.,*" necessarily included *all* the people of the United States.

We affirm in the second place that the term "We, the people &c," necessarily included all from the fact, that no one, by the Constitution, is authorized to make any exception. The rule of the Supreme Court of the United States is, that, "When a clause of the Constitution contains a positive, unqualified recognition of right, without any qualification, or restriction to be formed therein, we have no right to insert one not expressed, or which is not necessarily implied." In this Constitution there is no qualification or restriction to the term "we, the people," either expressed, or necessarily implied; and therefore we have no right to insert one,—and those who attempt to do so are guilty of an arbitrary assumption of power, unwarranted by the doctrines of the Declaration of Independence, the provisions of the National Constitution, and dangerous to the right and liberties of the American Citizen.

But further, it was the universally received doctrine of the American People that all men had "an equal right to life, liberty, and the pursuit of happiness." That governments, were instituted by them, for the protection of those rights, "deriving all their just powers from the consent of the governed. Hence it was a corollary which necessarily followed that all men equally needed protection, and were equally, entitled to participate in the formation of the government by which they were to be protected. And the expression "we the people of the United States," included *all* not only within its letter, but also within its spirit.

Again, it has never been deemed necessary to make any provisions for naturalizing those who were residents of the

United States prior to the formation of the Federal Government, or those who have been born within its jurisdiction since that time, for the plain reason that they were already citizens, and entitled to all the privileges and immunities thereof: and the fact that congress, in legislating upon the subject of nuturalization, have made no such provision, is conclusive evidence, under the rule of the Supreme Court of the United States, that no such legislation was necessary. Say the court in the case of Prigg vs. Pennsylvania, "the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend there shall be any farther legislation, to act upon the subject matter. Its silence as to what it does not do, is as expressive of what its intention is, as the direct provision made by it." Again, "When Congress have exercised a power over a particular subject, given them by the constitution, it is not competent for the state legislature to add to the provisions of congress upon that subject; for the will of Congress upon the whole subject is as clearly established by what it has not declared as by what it has expressed," Houston vs. Moore 5 h Wheat Rep. 1. 21. 22. Hence Congress having made no provision for naturalizing persons residing within the United States during the Revolution, and the formation of the Federal Govvernment, nor for the children of aliens born, and residing in this Government, the conclusion is that they were considered citizens, and subjects of the National Government, and no such provision was necessary.

But again all must be citizens and subjects of the National government who are born within its jurisdiction, unless by some constitutional provision they are excluded. The children of aliens, born in England, are natural born

subjects, and entitled to all the privileges and immunities of such: and so it is in this conntry.

"National allegience," says Blackstone, (Com. 1 v. 369) "is such as is due from all men born within the kings dominions, immediately upon their birth. For, immediately upon their birth, they are under the king's protection; at a time to, when they are incapable of protecting themselves."

Again, all persons are citizens of the National Government who reside within the limits of the United States, and are not subjects of any foreign Government by birth, or naturalization. For all men must be subjects of some government.

Hence, then we must conclude that all persons residing in the United States, at the time of the American Revolution, and the formation of the National Government, known under state laws as slaves, and all who have since been born within the jurisdiction of the United States, are Citizens thereof. Is it objected that a colored person cannot become a citizen of the United States, by naturalization? That *may* be true of all colored persons who have been brought within the jurisdiction of the United States, from foreign countries, since congress have passed any laws on the subject of naturalization. That is, those who were aliens to the National Government, at the time congress passed their first naturalization laws, may be aliens still. For Congress by the first section of the act passed in relation to the Naturalization of aliens, provided that "any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them" &c. So that any *alien*, who

is not a "*free white person*," cannot be admitted to the benefits of citizenship, under the rules and regulations of congress.

But this act of congress does not exclude from the benefits of citizenship those colored persons who, prior to that, had ceased to be aliens either to the National or State Governments. Neither does it affect the rights of those who were born within the jurisdiction of the Federal Government, and who consequently, never were aliens, and stand in no need of naturalization ; and inasmuch as all are citizens or natural born subjects, who are not aliens, hence all colored persons who are born in the United States, whether their parents are citizens or aliens, become citizens by birth; and there is no Constitutional power any where, to declare or treat them as aliens. They are not born under the protection of any foreign power, and they owe no allegience to any ; consequently they cannot be required to take any oath of renunciation of allegience.

But further, that colored persons are citizens of the United States, if born within its jurisdiction is in proof from the practice of our State and National Governments. In several of the States, where slavery has been abolished the colored man has been admitted to the privilges of an elector, of both the State and Nation. In the States of New York and Massachusetts the colored man, who was once a slave, by the laws and practice of the States,, now stands, not only a free citizen, but an elector of the nation ; and every state in the Union possess the power to cloth all their natural born, colored subjects with the franchise of an elector of the National Government, which they could not do, if these colored men were not citizens.

The right to estabtish uniform rules of naturalization belongs, under the constitution exclusively to congress. The States have now no authority to say who may, or who may not be citizens of the United States. But the people left it with the *state* governments to say what class of citizens, residing within their state jurisdictions, should be clothed with the franchise of an elector; and different states have adopted different regulations on that subject. In certain states a property qualification is necessary to entitle a citizen to the franchise of an elector. In others a particular color of the skin. In others both these are deemed essential: and in others, neither &c. Hence, it will be observed, that the *right of suffrage* is not a necessary incident to citizenship. A large portion of the citizens of Rhode Island were disfranchised under the old charter; but nevertheless they were citizens of the United States. So also in Virginia, or South Carolina, an alien may be naturalized, and thereby become a citizen of the United States. Yet not possessing the requisite amount of property to entitle him to vote, he may nevertheless be deprived of the right of suffrage. No one can deny that Kentucky has the power to abolish slavery within her limits, and then admit all the emancipated to the right of suffrage. This she could not do unless they were already citizens of the United States.

Thus upon every principle of reasoning, all colored persons, as well as others, who have been born within the jurisdiction of the United States, whether they have been deemed slaves, or free men, *are citizens thereof*, and as such, under our National constitution, *entitled to all the privileges and immunities of Citizenship.*

But is it still affirmed that clored men, and slaves are not

citizens? If theyare not, what prevents them from becoming citizens? Their color?—are they not persons? Does the constitution of the United States say any thing about the color of its citizens? or any thing from which the color thereof can be legally inferred? They are citizens unless excluded by State legislation. But state legislation cannot exclude any person from the rights and benefits of citizenship. The constitution has committed that power to the Federal Government to determine what persons, being aliens, can become citizens, and *how* they can become so.

The States can pass no laws that shall deprive a person of the right of citizenship. Nor can they pass any law that shall in any manner conflict with that right. There is nothing in the Constitution of the United States, nor in any law passed by the authority of that instrument, that excludes, or can exclude any person from the right of citizenship, who is born within our National jurisdiction; and for this reason, that class of persons made slaves, "*de facto*" by state governments, are nevertheless citizens of the United States.

If they are not citizens it is because certain state laws have made them slaves, and thereby deprived them of the right of citizenship. But if state legislatures have a right to deprive one class of persons of the right of citizenship, they have the same power to deny it to all classes; at least there is no rule or limitation beyond which they cannot go. For the constitution gives none, either expressly or impliedly: and it gives no other test than that of natural born, or naturalized citizens.

A state law, therefore, which would conflict with the rights of citizenship, is necessarily unconstitutional and void. If

making a man a slave, withholds from him citizenship, or is inconsistent with his privileges, and immunities as a citizen, then it is unlawful to make a man a slave, in the United States. But if the slave is a citizen (and that he is we have no doubt) then is he entitled to all the privileges and immunities of citizenship, which are guaranteed in the Federal Constitution for personal security, personal liberty, and private property. And the whole Nation, individually and collectively, stand pledged to protect and defend him in the enjoymen of those rights.

CHAPTER XIII.

The Writ of Habeas Corpus.

What are the privileges, and immunities of citizenship, of the United States ?

We have already seen that to be a citizen of the United States, is to be entitled to the benefits of all the guarantys of the Federal Constitution for personal security, personal liberty and private property. That the whole nation stands individually pledged, to all and each, to abide by and enforce those guarantys. And every citizen who is wantonly robed of any of these rights, by the express or tacit permission of the Government of the United States, is a swift witness

against us all, that we have violated our pledge to him, and thereby released him from his obligation to us. The permitting a single citizen to be crushed, and destroyed unjustly by any despotic power at home or abroad, without calling to his aid, if need be, the whole force of the Nation is at once aiming a death blow at the vitality of the Union.

Let it be known that the Federal Government will stand by and permit one of its citizens to be thus robed without calling to his aid the needful assistance, and it will no longer command respect; for it will be of no value. The end for which it was created will have failed. If the exclamation, "*I am an American Citizen,*" will not enshield us at home and abroad, and secure to us those rights which are inalienably ours, let us stand humbled and subdued by the memory of the ancient Romans, or arm ourselves again, for the establishment of a government that will afford us that protection. England has taught the world that it is of some value to be an English subject. Spain will never forget the lesson. The wanton distruction of a humble British subject by Spanish authority brought the whole power of England upon their coast, and *compelled* restitution. The British flag, in the port of Charleston, South Carolina, protects her subjects, from that oppression which the American flag has hitherto failed to do. Is it less a privilege to be an American Citizen, than a British subject? Let American citizens answer, and by that answer let them vidicate themselves before the world.

If all American citizens are not protected where lies the fault? in the nature and character of the government? or in those who are entrusted with the administration of it? Let the defect be known and remeded. If our government is

fundamentally defective, give us *change* or *revolution*. If those who administer it are faithless, *hurl them from power!* Give us a government that will afford protection to its citizens, *equal* at least, to the ancient Roman government, or the present British. With nothing short of that, should the American Citizen be satisfied.

But what further guarantys, for personal security and liberty, could a government provide, than the constitution of the United States has already provided? It has secured the right of petition,—the right to keep and bear arms, the right to be secure from all unwarrantable seizures and searches,—the right to demand, and have a presentment, or indictment found by a grand jury before he shall be held to answer to any criminal charge,—the right to be informed beforehand of the nature and cause of accusation against him, the right to a public and speedy trial by an impartial jury of his peers,—the right to confront those who testify against him,—the right to have compulsory process to bring in his witnesses,—the right to demand and have counsel for his defence,—the right to be exempt from excessive bail, or fines, &c., from cruel and unusual punishments, or from being twice jeopardized for the same offence; and the right to the privileges of *the great writ of Liberty, the Habeas Corpus*. And all these guarantys preceeded by the *express* declaration, that they are given to *establish justice, provide for the common defence*, and *secure the blessings of liberty*. But, it is said the Federal Government has not power to enforce these guarantees? We answer in the language of the Supreme Court of the United States, it has. For say they, in the case of Prigg vs. Pennsylvania, "if the constitution guarantys a right, the natural inference certainly is, that the

National Government is clothed with appropriate authority to enforce it." Again, say they, "The fundamental principle, applicable to all cases of this sort, would seem to be that where the end is required the means are given; and where a duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted," also, "The National Government, in the absence of all positive provisions to the contrary, is bound through its own proper departments, legislative judicial or executive as the cause may require, to carry into effect all the rights and duties imposed upon it, by the Constitution. Again, "A right implies a remedy" &c., and lastly say they, "The end being required, it has been deemed a just and necessary implication that the means to accomplish it are given also; or in other words, that the power flows as a necessary means to accomplish the end." Then all the rights and immunities guaranteed by the Constitution to the citizen of the United States, can be secured by the Federal Government, and for this end they have a right to pass all the laws necessary for the enforcement of those guarantys. The citizen cannot be attacked by any power from any quarter against which the Federal Government has not, or may not have full power to defend him, if her aid is necessary for his defence. Were it not so, it would be but a beggarly privilege to be a citizen of the United States.

But we will pass to an examination of some of *the positive provisions* of the National Constitution, for the security of liberty &c.. to its citizens: and in doing so, we will bear in mind that these provisons were "*ordained*" and "*established*" by the people, "*to establish justice,*" and "*secure the blessings of Liberty.*"

And first "the privilege of *the writ of Habeas Corpus* shall not be suspended unless, when in cases of rebellion or invasion the public safety may require." Which is the same thing as to declare that the privilege of that writ shall be maintained, except as therein excepted; and the rights of the citizens under it, shall be observed and protected. This is the language of the supreme law of the land, and is one of the great guaranties of the Constitution. Now what are the privileges of this writ, and who are entitled to them?

This is the writ that abolished slavery in England, and makes it impossible there; and as Mr. Christian well observes, makes slavery impossible wherever its privileges are secured.

This writ asserts, as a great Constitutional principle, the natural right of personal liberty in every body, and every where. And who are to assert and maintain the privileges of this writ? Let us again recurr to the rules of the Supreme Court for an answer: "The fundamental principle applicable to all cases of this sort would seem to be, that where the end is required, the means are given and where the duty is enjoined, the ability to perform is contemplated to exist on the part of the functionaries to whom it is entrusted," and if the constitution guarantees a right, the natural inference certainly is, that the National Government is clothed with appropriate authority and function to enforce it." Here then an end is preposed, to wit, to maintain the privileges of the writ of Habeas Corpus, for securing to the people of the United States the blessings of liberty: hence then, by necessary implication, "the *means are given*" to secure that end; and

here also, "a duty is enjoined," to wit, to enforce the observance of the privileges of this writ; hence the "*national government have the ability to perform it;* for they are the functionaries intrusted with that duty. Let them then perform that duty, and there is an end to American slavery.

It must also be observed that *all* are entitled to the privileges of that writ. The language is, "the privileges of the writ of Habeas Corpus *shall not be suspended, &c.* Now, if its privileges are denied to the humblest, human being in the United States, they are as really suspended as though they were denied to all. If they are denied for a single day they are as really suspended as though they were denied for all time.

But again, there is no exception of any class of persons who are not entitled to its benefits· and the rule of the Supreme Court is, "Where a clause of the constitution contains a positive, unqualified recognition of right, without any qualification or restriction therein, we have no right to insert one, not expressed, or which cannot be fairly implied." Here no class of persons are excepted from the benefits of this writ; and there is nothing to be found the letter or spirit of that instrument by which any exception could be fairly implied. Then *all* are entitled to the privileges of the writ of Habeas Corpus.

But what are the privileges of this writ? Says Judge Story, "This writ here spoken of, is that great and celebrated writ, used in all cases of illegal confinement, known by the name of the writ of *Habeas Corpus, ad subjiciendum,* directed to the person detaining an other,

and commanding him to produce the body of the prisoner, with the day, and cause of his caption and detention, to do, submit to, and receive, whatsoever the judge or court awarding such writ, shall consider it that behalf. Story Com. Con. 1333.

In England the benefit of this writ was often evaded, prior to the reign of Charles the Second, which evasion gave rise to the famous Habeas Corpus act of 31 Cha. 2. C. 2, which has been considered another great *Magna Charta*, and has reduced the general method of proceeding, to the standard of law and liberty. "That statute, says Judge Story, "has been in substance incorporated into the jurisprudence of every State int he Union, and the right to it has been secured in most, if not all of the State Constitutions, by provisions similar to that existing in the constitution of the United States. It is not without reasons. therefore, that the common Law was deemed by our ancestors, a part of the common law of the land, brought with them upon their emigration so far as was suitable to their circumstances; since it affords the amplest protection for their rights and personal liberty." This then being the nature and object of this writ, we will next inquire what are the "*privileges*" thereof guaranteed by the Federal Constitution?

"In the *first* place it asserts "that the personal liberty of the subject is a natural and inherent right, which cannot be surrendered, or forfeited, unless by the commission of some crime, and which ought not to be abridged in any case, without the *special* permission of the law. This it is, which induces an absolute necessity of expressing upon every commitment, the *reason* for which

it is made, that the Court, upon Habeas Corpus, may examine into its validity." vid. Black. Com. 3. v. 133-4.

In the *second* place it asserts "that the liberty of the subject cannot be restrained but upon *legal process*, awarded in due course of law, by an officer of the government, authorized to issue such process." And it is in aid of this principls, that the latter clause of the 5th article of the amendments of the Constitution of the United States, was "*ordained*" and "*established*" by the people, to wit, "that no person should be deprived of life, liberty," &c., without due process of law."

And *thirdly*, it asserts that the Government shall by its officers, take due precaution, and inquire cautiously into the facts, before any process shall be awarded to deprive the subject of his liberty.

These then are the "*privileges*" of this writ, which are secured to all the people of the United States; which no authority can abrogate, except under the circumstances therein named; and all state laws and constitutions which interrupt, limit, delay or postpone any portion of these privileges, are necessarily in operative and void.

And as before observe, there is, and can be no restriction,—Because 1st. There is none expressed or implied, 2nd. the writ itself is based upon the hypothesis that all men have a natural inherent right to liberty,—and 3d, it was one of the professed objects of the constitution to secure the blessings of liberty to the people, and for that purpose only, this provision was inserted; and it is a well settled rule of construction "that no court of justice is authorized, so to construe any clause of the constitution as to defeat its *obvious* end, when another construction

equally accordant with its words and sense will protect and enforce it.

Here then we have, in clear and unequivocal terms the guaranty of the privileges of this writ of liberty, placed above the authority of State and National legislation, by the voice of the people themselves; unrestricted in its application to any human being within our Federal jurisdiction; an authority intrusted in the hands of the highest functionaries of our National Government to maintain and enforce the privileges of that writ, and a positive duty enjoined upon them to do so. Now what becomes of slavery in the United States? What becomes of the State laws, and constitutions, denying to *three million American Citizens* the "*privileges*" of this writ? Again we say, "Well said Mr. Christian, Slavery can exist in no country, where the privileges of this writ are secured."

But it has been objected that this clause of the constitution was only restrictive of the action of the Federal Government; or rather of Congress. But it must mean something more than that; for the Constitution, and the laws made in pursuance thereof &c, are to be the supreme law of the land, anything in State laws, or constitutions to the contrary notwithstanding. It was designed by it to secure to every individual in the Union the benefits of this great writ of liberty, against both State and Federal legislation. For in the first place the Federal Government, being a government of only delegated power, and being authorized to do only that which the constitution, by express grant, or necessary implication authorized it to do, had no power to suspend the privi-

leges of that writ. In the next place the people were there securing to themselves the privileges of that writ, by making it one of the guaranties of the supreme organic law of the land; and it was to secure to themselves the privileges of this writ, which was then called "*the great writ of Liberty*," against all legislation, state and National, that this restriction was imposed.

Again, it would have been a matter of little consequence to restrain the National Government from depriving a citizen of the benefits of this writ, while the States could have done so, at pleasure. There was far less danger to be apprehended from the limited power and action of the National Government than from the, so called, sovereign States. When a restriction is thus put in general terms, upon a subject equally affecting all the people, it is safe to infer that it applies to all, and is restrictive of both the State and National Government.

"Thus, "No person shall be deprived of life, liberty, or property, without due process of law. No person shall be held to answer to a capital. or otherwise infamous crime, but upon presentment or indictment &c. No person shall be twice put in jeopardy of life, or limb, &c., &c., &c., all these, and such like guaranties, are National in their character, and binding upon the State, as well as the National Government.

CHAPTER XIV.

"A Republican form of Government."

We find in the 4th section, of the 4th article of the Constitution of the United States, the following guaranty.—"The United States shall guaranty to every State in this Union, a Republican form of Government, and shall protect each of them against invasion; and, on application of the legislature, or of the Executive, when the legislature cannot be convened, against domestic violence."

Here we find a guaranty of a Republican form of Government to every State in the Union. This clause has generally been understood to guaranty to every State in the Union, as such State, that each of their sister States should sustain a Republican form of Government, and that it was the right of each State, under the Federal Constitution to demand that the government of every other state in the Union, should be Republican in form. But this is not the real meaning of that clause, although the effect of it will be to secure to each State a Republican form of Government. It has a meaning more vital to the cause of human freedom, and one that bears more directly upon the sacred immunities of the American citizen, than such a construction could possibly give to it.

We must again recur to the question who made the Constitution of the United States? The answer is, the people. Who made the several guaranties therein con-

tained? The people. With whom were they made? With one another, each with all, and all with each; they are the mutual guaranties of all and each. For what purposes were they made? "To establish justice, ensure domestic tranquility, provide for the common defence, and secure the blessings of Liberty to themselves and their posterity. All these guaranties are joint, and several in their character. Let it, then, be constantly kept in mind, that the people of the United States, in their original, sovereign capacity, as individuals, were the only parties to this instrument. That as such, they, in the exercise of their native sovereignty, formed this Constitution, and made with each other the guaranties therein contained, for their *mutual* and *individual* protection.

The States, as such were no parties to that instrument, although through the people, they were all parties to it. To the States, as such, no guaranties were made, although through the people, composing the States, all the guaranties were made to them. Let these things be kept in mind in fixing the meaning and force of this guaranty of a Republican form of government, to every State.

With this view, we say this guaranty was designed to be a pledge of all the people of the Union, to each individual citizen thereof, that the relation which the state government should ever bear to him, should be that of a Republic; that is, that its treatment of him, as a subject of that government, should be consistent with the principle, that it was HIS government, established by HIS authority, for the protection of his natural, inherent rights. We say it is a guaranty to the *individual*, not to the State, as such, not to the *voting people* as such, nor to

a majority of them, but to *all*, whither enjoying the franchise of suffrage, or not. We repeat, it is not a guaranty to all the States in the Union, that each particular state government shall be Republican in structure. But it is a guaranty to all the people of each State, that *their particular* State government shall be of a Republican character.

Is it asserted that the intention of this guaranty is only to secure each State in the Union, against the inconvenience and danger of allowing any other than Republican governments to be united with them? We answer, if that were their only intention, they signally failed to express it. The language used expresses no such intention. Had they said, the United States shall guaranty *that* every State in this Union shall be of a Republican form of Government, such an intention might have been claimed with some degree of propriety. But when they said "The United States shall guaranty to every State in this Union &c.," it means quite another thing. By the language used, the guaranty of a Republican form of Government, is either *to the state*, as such, or *to the people*, composing the state; and it is, that *their* particular form of Government, shall be Republican.

But it was not to the State, as such, that the guaranty was made:—

Because, in the *first* place, the States, as such, stood in *need* of no such guaranty. The people of the State had full power, at any time to determine the particular form of their own government, whether oppressive or just—liberal or despotic, and if they desired a Republican form of Government, they could have whichever they chose

without any guaranty whatever from the National Government. It cannot be, that the majority of the people wished to be secured against *their own future volitions*, which might, on failure of their present system, demand a different form of government; and yet, the doctrine that the guaranty was made to the State, as such, would imply that. No, it was not the *state*, but the *individual*, crushed, and overwhelmed by an insolent, and tyranical majority, that needed such a guaranty; and to him, as a citizen of the United States, whether in the majority, or minority, is that guaranty given, to secure him, not only from *individual*, but also from *governmental* oppression.

And, in the *second* place this guaranty was not made to the State, as such, because, if it were so, should a majority of the State, resolve to change the form and structure of their government, in other words, to anihilate it, and establish another, that being or subject to whom the guaranty was made, would cease to exist, and there would be no one left to receive the enforcement of it—unless by scirefacias the new government should be made a party to the guaranty.

And in the *third* place, the States, as such, were not parties in the formation of the National Government, and therefore would not be subjects of guaranties from the people of the United States, except through the people composing the State.

All the ends sought to be accomplished by the formation of the National Government are better secured by considering this guaranty as made with all the people of the several States, securing to each the benefits of a Republi-

can form of Government; and pledging to them the faith and power of the Nation, that their relation to the state government shall ever be that of free citizens, for whose benefit, and by whose authority, in common with their fellow citizens, that government was established, and to be administered. By giving this construction to that clause, we not only secure to each individual the benefits af a Republican form of Government, but we secure the same to each State, and also to all the States, that every State in the Union shall possess a government—Republican in form.

And this construction is sustained by a rule of the Supreme Court of the United States; Say they "If by one mode of interpretation the right must become shadowy, and unsubstatial, and without any remedial power adequate to the end; and by another mode it will attain its just end, and secure its *manifest* purpose, it would seem, upon principles of reasoning, absolutely irresistable, that the latter ought to prevail."

The only objection that can be urged to this construction is, that it gives to all the citizens of the United States the benefits of a free government, and brings them all within its absolute protection.

But as we progess, further reasons will appear why this construction should be given to that clause. It has been urged that this guaranty, of a Republican form of Government does not militate against the continued existence of chattle slavery in the United States, because the term "Republican" is very vague, and indefinite; that slavery, and the worst kinds of despotism have flourished under governments that were Republican in form; and the Roman, Grecian and Italian Governments are cited as ex-

amples:—and, looking at the naked precedents without a careful investigation of the principles which gave name to those Republics, we should conclude that the friends of freedom had little to hope from a Republican form of Government. But when we come to investigate the principles which gave name to those governments, and observe the manner in which, and the reason for which that form of government is prescribed for all the states, we find, in that guaranty, a bulwark for liberty, that can, and will withstand the attacks of all the foes of freedom throughout the world.

If the guaranty should be construed, as made to the States only, or to the people in their *associated*, and not *individual* capacity, it would then loose much of its meaning, and *all* of its power. As a *State* it might be Republican in form, while but a small portion of the people were represented in their government. We say it might be Republican *in form*, while its fair proportions might be much cramped, and distorted by restrictions, limitations and partialities. The idea of a Republic, necessarily presupposes the sovereignty to be in the people; and that those who make the laws and administer the government, do so, by the expressed, or implied consent of the people, or a considerable portion of them. Hence those governments have been called Republics which have been under the controll of a wealthy aristocracy, where the masses of the people had little voice and less power. Nevertheless they were Republican in form, taken as a whole, and as distinguished from those forms of governments called Monarchies. The principles upon which those governments were administered, so far as their administrators and electors were concerned, are Republican; and hence those governments were

called Republics—and had a guaranty been made to any of those governments, as such, that their form should be Republican, as a whole, that guaranty would have been realized in such government. But had the guaranty been made to each individual subject of that government, that, for the protection of his rights, the government under which he lived should be to *him* Republican, the guaranty would not have been realized.

But in the case under consideration the guaranty of a Republican form of Government was made by *all the people* of the United States, *with* all, and each. And it can be realized only by giving to each the full benefits of such a government. Who says that this government was not designed to protect the individual citizen? Who will claim that this government contemplated a *favored class* of citizens?

But again what is this government of the State, that is to be Republican in form? Where does this governmental power reside, according to American doctrine? The government of a country is that, where the sovereign power resides. Where the power to make and execute the laws is placed. It is that, whose will is embodied in its laws, and that power in this country, is conceeded to be in the people, the citizens of the country. This idea of a government, seperate and independent of the people is a sham. There is no such thing. We often speak of our legislative, judicial, and executive departments, as constituting the government. But in reality they do not. They are but the *means*, adopted by the people, to give expression and force, to their own sovereign wills. The constitutions are but the written directions of the people, pointing out in what particular manner

and to what extent, these means shall be used. Therefore, from this consideration we may safely conclude that this guaranty was with the people in their original, individual, sovereign character.

What then is our conclusion from this guaranty? It is this, that all the citizens of the United States stand pledged to each citizen, that the State government under which he lives shall be to *him* Republican. That the relation which he shall sustain to that government shall be that of one of the *free, independent sovereigns*, by whose consent the government was established, and for whose protection it shall be maintained. And if there be a single citizen who is, or has been robed of full and ample protection in the enjoyment of his natural and inherent rights, by the authority, or permission of the State in which he lives, this solemn guaranty has been violated, and the plighted faith of the nation demands that his wrongs shall be redressed, if need be, by the overthrow of that government that thus oppresses him. Let this be the construction of that guaranty, (and it should be nothing less) and let the Nation see to it, that it is enforced, and who could boast of immunity, like an American citizen! Then, indeed, could she be called "the land of the free and the home of the brave."

CHAPTER XV.

Protection against Invasion and Domestic Violence.

By the latter clause of the 4th sec. of the 4th art. of the Constitution of the United States, the nation stands pledged to protect each and every State in the Union against foreign and domestic violence. This necessarily involves *national treasure* and *blood :* and consequently gives to the government a supervision incident to such an obligation.

Mr. Madison took this view of the subject. In a speach delivered in Congress on the 13th day of May, 1789, he held this language, "Every addition they (South Carolina and Georgia) receive to their number of slaves, tends to *weaken them,* and render them *less capable* of self defence. In case of hostilities with foreign nations, they will be the means of *inviting attack,* instead of *repelling invasion.* It is a necessary duty of the General Government to protect every part of the empire against danger as well external as internal. Every thing therefore, which tends to increase this danger, though it may be a *local* affair, yet, if it involves National expense or safety, it becomes a concern of every part of the Union, and a proper subject for the consideration of those charged with the general administration of the government.

This position of Mr. Madison cannot be denied. While Ohio, as a member of the Union, is obliged to furnish men

and money to protect all other parts of the Union against foreign and domestic force, she has a direct and positive interest in suppressing any and all institutions, which endanger the peace and safety of any part of the United States.

That the natural and necessary effect of slavery in any community or state is to weaken and impoverish it, no one can deny. To rear up in our midst, three millions of human beings whose rights and interests would induce them to seek the distruction of our government, is an act which can only tend to our ruin.

The south acknowledge this. When the Hon. John Q. Adams, introduced a petition from a few shoemakers of Massachusetts, to dissolve the Union, the whole south were overwhelmed with excitement. They acknowledged their weakness. They declared their utter inability to defend themselves against the foe thus nursed in their midst. They acknowledged their dependence upon the free States, for protection.

Are we then, of the free States, bound to pledge our lives and fortunes, in defence of the south against an institution of their own rearing, and yet as a nation, have no right or authority to remove that danger?

We have embarked on board the same ship, and are bound to defend every part of it. Therefore as Mr. Madison said, "Every thing which tends to increase this danger, though it may be a local affair, yet, if it involves National expense or safety, it becomes a concern of *every part* of the Union. *and is a proper subject for the consideration of those charged with the general administration of the Government.*"

CHAHTER XVI.

The Right to bear arms : Due process of Law.

MILITIA.

The 2d article of the amendments to the constitution provides "a well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be enfringed."

Here is another of the immunities of a citizen of the United States, which is guaranteed by the supreme, organic law of the land. This is one of the subordinate rights, mentioned by Blackstone, as belonging to every Englishman. It is called "*subordinate*" in reference to the great, absolute rights of man; and is accorded to every subject for the purpose of *protecting and defending himself*, if need be, in the enjoyment of his absolute rights to life, liberty and property. And this guaranty is to all without any exception ; for there is none, either expressed or implied. And our courts have already decided, that in such cases we have no right to make any exceptions. It is hardly necessary to remark that this guaranty is absolutely inconsistent with permitting a portion of our citizens to be enslaved. The colored citizen, under our constitution, has now as full and perfect a right to keep and bear arms as any other ; and no State law, or State regulation has authority to deprive him of that right.

But there is another thing implied in this guaranty; and that is *the right of self defence.* For the right to keep and

bear arms, also implies the right to use them if necessary in self defence; without this right to use the guaranty would have hardly been worth the paper it consumed.

But again this right of self-defence also implies that the citizen has a right to himself, that is to his own personal security, liberty, property, &c.,—all of which is herein and hereby guaranteed.

And this right to personal security is more fully and directly guaranteed in the *4th art. of the amendments*, to wit, "the right of the people to be secure in their persons," &c., "shall not be violated;" "and no warrants shall be issued but upon probable cause, supported by oath, or affirmation, and particularly describing the person to be seized." Now these are among the guaranties of the people of the United States, made to each and every citizen, and are even held applicable to those who are not citizens. The warrant to arrest an alien must contain all the requisites of a warrant to arrest a citizen. His personal security and liberty are under the care and protection of the government while he resides within her jurisdiction.

Now by what authority can any State pass a law setting at naught these positive guaranties of the constitution in the face of this provision? "This constitution and the laws of the United States made in pursuance thereof," &c., "shall be the supreme law of the land, and the judges in every State shall be bound thereby; any thing in the constitution, or laws of any State to the contrary notwithstanding.

Who does not know that these guaranties in the Federal Constitution, were made for the express and only pupose, of securing to every citizen full and perfect immunity in the

enjoyment of his natural and inalienable rights? That no exceptions, or limitations were made or designed to be made, by which these guaranties were to be modified. We have before shown that at the time this constitution was adopted the feeling of the country was strongly *against* slavery. That the leading members of the convention denounced it, and refused to admit into the constitution any word, which could, by any legal rules of interpretation, be made to mean slave or slavery,—at the same time declaring that they would not admit the idea that man could be the subject of property. We have also shown, that at this time, the most that was asked was for time, so to arrange their circumstances as to put an end to slavery, with the least possible loss and inconvienence. That it was the express understanding that slavery was circumscribed, and limited, by the Ordinance of '87 &c., and that within a few years it would cease in the United States. That it was supposed, the death blow had already been given to it, from which it could never recover. That there were then no apologists for slavery,—no advocates for slavery extension, or perpetuation, but all desired to see some way devised by which it should be speedily terminated. It was with feelings and expectations of this kind that the constitution was adopted, and the Government of the United States went into operation. The constitution was framed, and all the guaranties for freedom, made as though there were none but freemen in the country; and nothing but this tacit understanding, that slavery should be abolished at the earliest practical day caused it to survive that period. And it was this understanding and expectation that restrained the full and speedy operation of those gueranties for freedom. But that under-

standing has been violated, and those expectations have most signally failed. The entire policy of the slaveholding portion of this Government has been changed. Instead of confining slavery to its then limits, and abolishing it with all convenient dispatch, they have extended it over teritories as large as the original thirteen states. They have brought nine new slaveholding states into the Union, and are now concentrating their whole power to extend it further, and gain a permanent dominion in this Government; and there is now no alternative left, but to stand by the guaranties of the National Constitution, and extend the blessings of liberty to *all* within the United States.

DUE PROCESS OF LAW.

But there are other guaranties for freedom, to be found in that instrument, which cannot be realized while slavery is permitted in the Union. Nevertheless, they stand there, as fresh and imparative as they did the day they were made. Among others, is to be found the following; in the latter clause of the 5th article of the amendments to the constitation, "No person shall be deprived of life, liberty, or property, without due process of law."

It cannot be claimed that the word "*person*" does not include the so called slave. In all the clauses of the constitution where it is claimed that this class are referred to, they are denominated "*persons.*" As for example, in the 3d clause of the 2d sec. of the 1st article of the constitution, *slaves* are said to be intended by the expression "three fifths of all other *persons;*" again in the 1st clause of the 9th sec., "The migration and importation of such *persons,*" &c., is said to mean slaves!—and again in the 3d clause of the 3d sec., of the 4th article, "No *person* held to service

or labor" &c., is translated slave. Then by what authority can any one affirm that in the clause under consideration the term *person* does not also include that class known under State laws as slaves. They cannot be excluded by any known, legal rule of interpretation, and whoever presumes to exclude them is guilty of an arbitrary assumption, dangerous to the liberties of the American people. For the same authority that can exclude one class from the benefits of that guaranty, can with equal propriety excluded any, and all other classes. But they cannot be denied the benefits of that guaranty. Can a colored man, or a slave even, be tried for a capital, or otherwise infamous crime, unless upon a presentment, or indictment of a grand jury? It is universally admitted that they cannot. That they are within the provisions of that guaranty. Can they, or either of them be twice put in jeopardy of life or limb for the same offence? Certainly not. What would be a good plea, in bar, for any white citizen, would also be good for them. Can a colored man or slave, be lawfully compelled to be a witness against himself? By no means: in that respect, he is within the meaning of the constitution. How is it then that the colored man and slave, are understood to be within the meaning of all the provisions of the 5th article of the amendments of the constitution except that which extends to life and liberty? By what rule of shufling and double interpreting is it, that the same person to whom these several guaranties are made in that section is excluded from this latter clause, when on examination it will be found that the person to whom these other guaranties are made is the same to whom the latter is made also? It is not true that the colored man is excluded from the benefits of this

guaranty. Nor is there any constitutional power in either the National or State Governments to exclude him. And any law passed either by congress or any of the State legislatures that denies to him the full benefits of that guaranty, is flatly and palpably in violation of this provision of the National Constitution.

But what is to be understood by "due process of law?" The fact that we have a law upon our statute books punishing murder, theft, burglary &c., is no warrant for arresting a man supposed to be guilty of any of those crimes, without legal process: that is, the law itself is no process authorizing an arrest, and detention. That is technically called the "*process*" which the Government puts into the hands of its officer, authorizing him to do the particular thing, which the law requires to be done; and we have already seen that no warrants of seizure shall issue against any person, but on probable cause supported by oath, or affirmation; and that a warrant to authorize the seizure must so particularly describe the person, to be seized, as to leave no room for mistake. All processes which can authorize any person to seize and detain another, must be issued by the proper officer, authorized by law to issue such process, under his hand and the seal of his office. And that process must set out upon its face, such facts as will, under the law justify its execution. The man that has been guilty of murder, cannot be arrested and detained without process. The officer who seeks to bring him to justice must have his process issued by the proper authority of the state. The Jailor must have his process of commitment, to detain him in jail; and the Sheriff must have his warrant of execution,

before he can inflict the fatal penalty. Thus from the beginning of the arrest to the end of the execution, the process of law must be constanly in the hands of the officer, to warrant the detention of the criminal--and under our Federal Constitution there is no authority in any department of any government to dispense with such process. And this guaranty is as broad as the Union. It extends to every human being, be he citizen or alien, black or white—bond or free. It is as valuable as is the good faith and integrity of the American Nation. It is as sacred as our National honor—as strong as our National power.

By what legal process, we then inquire, are the three million slaves held in bondage, "*deprived of liberty?*" Go into the infamous slave pens in our National Capitol, and inquire by what legal process that wife is torn from her husband! That mother from her babe? Follow up that coffle of slaves, hand cuffed and manacled,--driven through the streets of Washington, under the stars and stripes which float from the dome of the Capitol, and inquire by what "*legal process*" they have been thus stripped of their God given rights and hurled down from the high eminence of humanity, to a level with the brute? Think of this, American Citizens, and then seriously tell us, what you think the solemn guaranty of the American Nation is worth. Think of this, and then, in the presence of a holy and righteous Judge, tell us, if you think his "*wrath can sleep forever.*"

CAAPTER XVII.

The power of the Federal Government over the Territories of the United States.

The new doctrine started by the apologists and advocates of Slavery, that Congress has no power to legislate for the Territories of the United States, is now being advocated with so much apparent earnestness, that it demands a passing notice.

We will start with the following proposition. If the National Government, by virtue of the powers vested in them by the Federal Constitution, have authority to treat with a Foreign Nation equally sovereign and independent, for the acquisition of territory, and by virtue of such power, territory is acquired, by the United States, the sovereignty over that territory must vest in the United States.

When SHE treated with Mexico, and obtained from her the territories of New Mexico and California, did she only obtain the right of property which the Mexican Government had in those territories or did she obtain the sovereignty also? If she did not, the sovereignty yet remains in Mexico. If she did, then is the sovereignty vested in the United States; and where the sovereignty is, there the right to legislate is to be found.

But if the sovereignty is vested in the United States, by whom is the power to legislate, a power always incident to sovereignty, to be exercised? Not by the people of these

Territories, or of the States, in their character as State citizens; but by all the citizens of the United States, in their character as National citizens.

But the power to legislate as a nation, is exclusively vested in congress, by the Supreme organic law of the land. Consequently congress has the full and exclusive power of legislation over all the territories of the United States, under the Federal Constitution.

While it is admitted that the National government has power by treaty, to acquire territory from foreign states and nations, and incorporate that territory into our Union, it is worse than ridiculous to deny to that government the rights and powers of legislation over such territories.

When territories are thus acquired by the United States, the sovereignty must vest either in all the people of the United States, or in the people of the acquired Territory. According to the new doctrine the sovereignty vests in the people of the Territory; consequently the right to legislate respecting their individual and domestic concerns, belongs exclusively to them.

If this doctrine be true, then the people of the Territories are not subjects of the United States Government; and cannot, without their consent, be brought under the jurisdiction of the United States. Until they organize themselves into States, and are admitted into the Union, the Federal government has no authority over them. Being sovereign and independent, they are not obliged to come into the Union at all. They have a right by virtue of their sovereignty, to establish for themselves such a government as they shall think proper, and form such National alliances as they shall see fit. The only relation the National gov-

ernment can sustain to them is that of a great land-holder; and when the government title is extinguished, SHE has no further claim on them. In fact, as fast as individuals shall purchase up this lands from the United States, so fast and so far is all right of the nation to those territories extinguished. Having only a property jurisdiction over the Territories, to the extent she parts with her property therein, she parts with all jurisdiction.

This being the case, New Mexico is now at liberty to establish for herself a government independent of the United States. And she may seek to ally herself to the Union, or to Mexico, as she pleases: and we, as a Nation, have no legal power to interfere—because we have never acquired any jurisdiction over the "persons and domestic concerns" of the people of the territories.

To this conclusion this new doctrine necessarily brings us. Its absurdity is sufficient to prove its falsity independent of any other consideration.

But all the previous action of our National government in respect to the Territories belonging to them, has been predicated upon the hypothesis, that the sovereignty over those Territories was vested in the United States.

Since the establishment of the Federal government, the Nation has exercised legislative judical and executive jurisdiction over these Territories. Crimes against the United States could as well be committed and punished in the Territories as in the States. It was as much piracy to import slaves into the Territories as into the States. The Act of 1800 prohibiting the Slave Trade, applied to all citizens of the United States, whether residing in the Territories or States. By the act of 1798 it was made a penal offence to bring

slaves into the territory of Mississippi from without the United States. In 1804 certain classes of slaves were forbidden to be brought into the territory of New Orleans. In 1819 congress legislated on the subject of Slavery in Florida. In 1820 the famous Missouri compromise was made excluding slavery north of 33° 30'.

All territorial governments which have been established since the formation of the Union, have been established by the authority of congress, and they have always reserved to themselves or the President, the authority to appoint and control the civil action of the Governors of these Territories They have always reserved to themselves the power, and not unfrequently exercised it, to supervise the action of these territorial legislatures. Congress frequently has determined the qualifications of the electors of both Houses in the Territories. No law of the Territories is valid until approved by the Governor who receives his appointment and is also removable by the President of the United States, and when any law is approved by such Governor, it may be annulled by congress or the President.

We might go on and instance many specific cases, proving that the National government, since its first organization, has continued to exercise full and exclusive jurisdiction over all HER territories, legislative judicial and executive. But it is unnecessary.

Our conclusion then is, that the Federal government has full and exclusive jurisdiction over all the Territories of the United States; and that the native inhabitants of those Territories are citizens of the United States and subject to HER jurisdiction. That they are enshielded by the Federal Constitution and entitled to all the privileges and immuni-

ties guaranteed by that instrument to persons and citizens of the Union.

From the foregoing we, therefore, infer, that whatever may be the dispute between consolodationists, and the states right m as to the meaning and extent of the guaranties of the Constitution of the United States in regard to ctizens of State governments, there can be none, as to citizens of the Territories of the United States.

All territorial governments in the Union are established by the direct action and authority of the United States, under the Federal Constitution; and all citizens residing under those governments are entitled to all the privileges and immunities guaranteed by the Constitution of the United States for the personal liberty and security of the subject.

No law affecting the liberty or security of the territorial citizen can be passed except by the authority of the National government. Consequently no law can be passed that will be of any binding effect, which contravenes any of the provisions of the Federal Constitution.

If the Constitution of the United States does not authorize Congress to enslave men by legislative enactment, they cannot delegate the power to others to do so; nor can that power be exercised by any one, while the subject is a citizen of the United States, and entitled to the benefit of the positive guaranties of the Constitution for personal liberty and security.

But the Constitution of the United States knows men only as persons and citizens. This question was so decided by the Supreme court in the celebrated Mississippi case. Consequently the Constitution knows no class of persons

résiding in the territories of the United States, who are not entitled to all the immunities, guaranteed to persons in that instrument.

But the privileges and immunities guaranteed to citizens and persons in that instrument are absolutely inconsistent with slavery. Consequently these guaranties make it impossible legally to treat men as slaves in the territories of the United States.

But if slavery cannot legally exist in the Territories of the United States, because of the guarantys of the Federal Constitution for liberty. These territories cannot legally be converted into slave holding States. For if all persons residing in the Territories up to the time they are converted into States, are entitled to liberty under the Federal Constitution, they are in the eye of the supreme law of the land free ; and cannot be legally enslaved by any authority whatever. For the Constitution of the United States &c., is the supreme law of the land; and no State constitution or State law which has been farmed and enacted since the time of its adoption, and which conflicts with any of the provisions of that instrument, or tends directly to deprive any citizen or person of the United States of any of the privileges or immunities guaranteed to him by it, is of any legal force or validity whatever.

The person who has once been free under the American eagle, can never again be enslaved. When he has once been within the reach of those constitutional guaranties, there is no legal power in the United States, which can deprive him of their protection. Consequently if a master shall voluntarily permit a slave to go beyond the

jurisdiction that enslaved him, and beyond the reach of slaveholding comity, his slave becomes a free man. The legal shackles fall off, and there is no legal power in the Union which can again put them on him.

This then is the conclusion! Before a Territory of the United States is erected into a State, the citizens of that Territory are citizens of the United States, and of the United States only. That no laws but those passed by the authority of the United States can effect their rights. That no laws passed by the National Legislature or by their authority, which conflict with either the letter or spirit of the Federal constitution are of any binding force. Consequently slavery cannot exist under Territorial Governments, and therefore all persons residing within the National Territories are necessarily free in the eye of the law.

But if they are free under the Territorial Government, they cannot be enslaved by any government of a State which can be formed out of such Territory. For any State Constitution or law which would enslave them, would be void, as being in conflict with the supreme law of the land, under which they could not be enslaved.

In this view, all the States which have been formed out of the Territories of the United States since the adoption of the Federal Constitution, can have no authority to establish slavery, and all such State Constitutions and all laws made in pursuance of such constitutions tending to establish slavery therein are void; and all persons held in bondage by virtue of such Constitutions and laws, are in contemplation of law free.

CHAPTER XVIII.

What the National Government can and should do in the present exigencies of the case

We now come to consider what the National government can and should do for the Abolition of Slavery in the United States.

In the *First* place, it can abolish slavery and the Slave Trade in the *District of Columbia*, and put an end to that most disgraceful slave market—carried on in the face of the Embassadors of all the Despotisms of Europe.

In the *Second* place, it can Abolish the *Coast wise Slave Trade*, and put a stop to that piratical traffic under the flag of the United States. Our Nation have involved themselves in a most beautiful dilemma, in the abolition of the *foreign* slave trade, and in denouncing and punishing it, as "piracy," while at the same time they encourage and support the *domestic Slave Trade*, and permits men, women and children to be made legitimate articles of commerce.

What, we ask, was there, in the foreign slave trade so shocking and abhorrent to the moral sense of this Nation, that the individual, who was found engaged in *that* traffic, must expiate the crime with his life, while the man who is thus engaged in the *domestic Slave trade*, is thought worthy to be elevated to the highest office in the gift of the

American people? Is it that the native heathen, in the wilds of Africa. has a higher, and more sacred claim to the paternal care and protection of *our* government, than the *Christian citizen*, born under the jurisdiction of our National government, and entitled to its especial care and protection? Tell us, American citizen, in what this difference consists. "Piracy," to ship a slave from Africa? but *honorable, legitimate, Republican, Christian traffic*, to ship them from the Capitol of the United Strtes? "Piracy," to make a wild, untutored savage of Africa a slave—but perfectly *moral*, and *upright* to make a *Christian citizen* of the United States such? Away with such nonsense and absurdity! If the *foreign* slave trader deserves to be punished with death, much more does *he* deserve that fate, who makes merchandize of his fellow citizens.

The solemn act of the United States that denounces the *foreign* trade as "*piracy*," denounces the same *moral* condemnation of the *domestic trade*: and all that is wanting to make it *actual* "piracy" is the mere formal wording of the law; for it possesses all the *moral* delinquency and turpitude necessary to constitute that crime. There is no way of avoiding the conclusion, that either we have been guilty of a wrong in denouncing and punishing the slave trade to Africa as piracy, or we are guilty of neglecting a most solemn and imperative duty, in not denouncing and punishing the domestic slave trade as such. And while that act, abolishing the foreign slave trade, and punishing it as piracy, stands upon our statute books unrepealed, and the domestic trade is thus permitted to be carried on under the permission, and protection

of our National Government, we stand before the world, and in the face of high Heaven, confessedly a nation of moral pirates. Avoid the conclusion who can.

In the *third* place we can abolish the *inter-state, slave trade.* No one can with any degree of propriety deny this. Look at that clause of the Constitution which gave the National Government authority over the foreign slave trade. It is this, "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." What is the power given in this clause? "To regulate commerce." With whom? First, "with foreign nations." But why not *among* foreign nations. Because the people had no authority to regulate commerce *among* foreign nations. They had only authority to regulate *their own* commerce *with* other nations. Second, "Among the several states," not with them. Why *among* the states? Because the people of the United States had that authority, and thought it better to commit that power to the National Government, than to leave the commerce of the States with one another, to be regulated by the conflicting interests and legislation of the States. Says the Supreme Court in the case of Gibbon vs. Ogden, 9. Whea. Con'd. Rep. 569. "Commerce, among the several States, means intermingled with, and cannot stop at the external boundary line of the State, but may be introduced into the interior"

And third, *with* the Indian tribes, not *among* them, for the same reason that the people of the United States had no authority to regulate commerce among foreign nations. They could only regulate their own commerce

with them. So then from this clause, we see that the "power to regulate commerce," is absolutely, and exclusively in Congress; and more so, in regard to the several states, than in regard to foreign nations, and the Indian tribes, in this respect. In regulating the commerce of the people with foreign nations, and Indian tribes, the feelings, interests and volitions of those nations must be consulted, and their consent and agreement must be obtained, before the regulation is perfected. Not so in the regulation of commerce among the several States, for here the will of Congress is absolute ; and they are not obliged to consult the feelings, and wishes of the States, and obtain their consent and ratification to make the regulation valid and binding. So much for the powers of Congress to regulate commerce. It should be added, perhaps, that, so far as the trade of a citizen of the United States with foreign nations, or among the several states is concerned, on the part of the citizen, Congress have the samepower in the one case as the other.

But by this power, of Congress, to regulate commerce with foreign nations, it is universally admmitted, by the courts and the people, that Congress have full power over the foreign slave trade—to prohibit it entirely ; and to denounce and punish as pirates, those of our citizens who should be found engaged in it. But Congress have the same power over the commerce, among the several states in the Union, that they have with foreign nations, delegated by the same clause of the constitution, and in precisely the same language. If Congress then, by that clause, have authority to annihilate the foreign slave trade, they have the same authority to annihilate the domestic slave trade. And the

framers of the Constitution so understood it; else why did they deny to Congress the power to prohibit the "migration" and "importation" of slaves by the States, prior to 1808, as it is contended they did, in the 9. sec. of the 1st art. of the constitution? Unless this clause of the 8th sec. gave to Congress this power, what necessity was there for the prohibitions in the 9th sec. Observe the language of this last section—remembering who used it.

The people of the United States, speaking for the whole Union, say "the *migration or "importation"* of such persons as any of the States, now existing, shall think proper to admit" &c. The term "importation" we all understand means bringing in from abroad; from some place foreign to the place into which the person or thing is brought. Hence the people, speaking for the whole United States, used the term "importation" as bringing persons into the United States, who were before *out* of the Union. The term "*migration*" means a change from place to place in a country. without reference to first coming in, or afterwards going out. When persons are brought into the country, they may be said to be "imported." When they go about from place to place, *within* the country, they may be said to "migrate;" and when they *go out* of the country, they are said to "*emigrate*," and it is in such a sense, these words, "migration," and "importation," were used. After these persons were brought into the United States, the taking of them from State to State, was, in refference to the United States, merely "*migration.*" Hence, if they would prohibit Congress from abolishing the inter-state, or domestic slave trade, prior to 1808. it became as necessary for them to reserve the right of "migration" as "importation;" and for the same

reason, that, by the 3d clause of the 8th sec. of the 1st art. congress *had* as much power over the one as the other. But the time for which congress was restricted from abolishing the domestic, as well as foreign slave trade, expired forty two years ago; since which time the people of the United States have had full power to put an end to the domestic slave trade; which had they done it, when they abolished the foreign trade, would have put an end to the whole institution, in the United States. It would have put a stop at once, to the disgraceful slave breading for the Southern market, so long carried on by Virginia, the boasted "mother of Presidents," who adds to her wealth yearly, some thirty millions of dollars, for the human hearts she sells, in the shambles of the South.

Fourth we can put an end to *slavery in all the territories* of the United States, and all other places within the exclusive jurisdiction of the Federal Government.

It cannot be seriously doubted, that the people of the United States, though the Federal Government, have all the before mentioned powers to control, and abolish slavery, and they have had this power for more than forty years; and yet holding this power, they have permited slavery to increase in the United States from little more than half a million, to three million slaves. They have allowed it to spread like a cancer, eating out every thing vital to the interests of freedom and humanity. They have allowed it to rear its hydra head, and assail the freedom of speech and the press; and it now holds the great political parties in its gigantic folds, ready to *caress* or *crush*, according to the *servility* or *independence* they manifest: and for this, the people themselves are responsible. They could crush that power to day, if

they would. And herein is their guilt, because they *will not.*

The powers before enumerated, are amply sufficient to put an end to slavery, and at once, if the people would exercise them. As a further proof to sustain this position, we have only to refer to the slaveholders themselves, headed by John C. Calhoun. In their address published at Washington last winter, they say, "It may be even made a serious question, whether the encroachments (on slavery) already made (by abolitionists) without the aid of any other, would not, if permitted to operate unchecked, *end in emancipation, and that at no distant day.* But be that as it may, it hardly admits of a doubt, that if the aggressions already commenced in the House, and are in progress, should be consumated, such, in the end would certainly be the result. Little in truth, would be left to be done, after we had been excluded from all the Territories, including those to be hereafter acquired,—after slavery is abolished in this District, and in the numerous places dispersed all over the south, where Congress has the exclusive right of legislation,—after the other measures proposed, are consumated, every out-post and barrier would be carried, and nothing would be left to finish the work of Abolition at pleasure in the states themselves." Now what becomes of the objection of those who say we can do nothing towards effecting the abolition of slavery? That the north has no *power* over the subject, or at most can only abolish it in the District and Territories, but cannot affect it in the States? Liberty, this diseased state of slavery, of which the southern address speaks, is infectious: and give it a few resting places in the South, and that contageon, fatal to slavery, will spread over the

whole country. The South consider that the north hold the whole power in their own hands; and let Congress do what they can, and the shackles will fall from the limbs of every slave. The blessings of liberty, civilization, education, christianization, as well as the temporal salvation of three millions of slaves, hang upon the volitions of the North. Upon them, the responsibility of sustaining slavery in the United States rests.

Fifth, Should any one be disposed to doubt the result predicted by Mr. Clahoun in his southern address, we have already seen that under the various guaranties of the Federal Constitution, for the liberty of the citizen, Congress have full and ample power to put an end to slavery *throughout the Union,* by enacting such laws as may be necessary to enforce those guaranties. Let them see to it, that all within the United States have the benefits of those guaranties, and our ears will soon be greeted with the songs of the emancipated millions, exchanged for the wailings of those now crushed and bleeding, in the Southern prison house of dispair.

CHAPTER XIX.

What would insure the availability of these Guaranties ?

We have thus examined some of the leading guaranties for the personal liberty of the citizen, which, without any others, are sufficient to make slavery impossible, as a legal institution, in the United States. We shal

therefore consume no further time in considering the further guaranties of the Federal Constitution for the personal liberty of the subject. No one can doubt, but that the framers of that instrument intended to make such guaranties as would be amply sufficient to secure to every citizen in the United States, complete protection; and in truth the guaranties therein made, if faithfully kept, cannot fail to accomplish the end for which they were intended. And furthermore, it cannot be doubted, that they also intended to clothe the Federal government with sufficient power to enforce those guaranties; and taking the rules adopted by the Supreme Court of the United States, for construing that instrument to be correct, (and who can show that they are not correct?) the Federal Government have ample power to enforce those guaranties in every State in the Union. The rules are these—"If the constitution guarantys a right, the natural inference, certainly is, that the National government is clothed with appropriate authority, and function to enforce it;" again—"The fundamental principle applicable to all cases of this sort would seem to be, that where the end is required, the means are given. And where a duty is enjoined, the ability to perform it is contemplate to exist on the part of the functionaries to whom it is entrusted." Again—"The National government, in the absence of all positive provisions to the contrary, is bound, through its own proper departments, legislative, judicial, and executive, as the case may require, to carry into effect all the rights and duties imposed upon it by the Constitution." and Again—"A right implies a remedy, and where else would the remedy be

deposited, than where it is deposited, by the Constitution?" And finally—"The end being given, it has been deemed a just and necessary implication that the means to accomplish that end are also given; or in other words, that the power flows as a necessary consequence to accomplish the end."

Taking these rules, then, for our guide, and we have only to find the *guaranties* of the Constitutions to ensure the protection of every citizen, in the enjoyment of his natural and inherent rights. For *in* those guaranties we find plenary power to enforce them.

If the Constitution of the United States was formed for the purposes of establishing justice among its citizens —to provide for the common defence of its citizens—to promote their general welfare, to secure to them the blessings of liberty, and these guaranties were made for that end, then, most unquestionably, the Federal government have full power to secure these ends, through the proper departments thereof. If laws are to be made to enforce these guarantys, we have a National legislature to enact them: if adj-udication is to be had, we have a National judiciary.—If they only remain to be executed, we have a National executive, clothed with the power of the whole Union. What then is, or can be necessary, to secure to all, the full benefit of these guaranties?

The only thing wanting for the protection of every individual in the full enjoyment of his natural and Constitutional rights, is a disposition, on the part of the people, to enforce the guarantics of the constitution. Let them no longer plead that they *would* do it if they *could*.

They have the full power, but lack the disposition to exercise it.

How long, we ask, have you, through Congress, had the power to put an end to slavery, and the infamous slave trade in the District of Columbia? How long have you had the power to abolish the most disgraceful slave market of the world, in your National Capitol? How long have you permitted that ten miles square, which, as the Capitol of the "Modle Republic," should have been consecrated to freedom, to be desecrated by the tread of the infamous slave driver, and to drink up the life blood of the bleeding and crushed slave? How long have you serenaded your Presidents, Senators and Representatives in Congress with that music, whose treble, was the shriek of the slave mother, torn from her babe, whose tenor, thewailing of children forced from the affectionate embraceof their parents, whose bass was the deep, unutterable groan and anguish, of the heart-broken husband and father, as he surveyed the disolation of his household; and whose accompaniment, to complete the "Melody," was the cry of the Auctioneer, the falling of his hammer—the loud curse of the brutal driver the clanking of the chain and fetter and the sharp crack of the bloody whip? We answer for *fifty years!* For *fifty long years* have these scenes been daily enacted in your National Capitol; before your eyes, and before the eyes of all the world, and *tremble*, faithless citizen, in the face of high Heaven!! *For fifty long years*, as an American citizen you have had the power to banish slavery, with its long catalogue of crimes, and woes, from that District; and yet you have refused to do it, lest you should trample on

the "rights, and immunities" of the bloody tyrant. For *fifty long years* have you been besought, by tears and groans, and prayers and heart-breaking agonies, to put an end to these things, by abolishing slavery in your National Capitol; but you have turned away to fight a sub-treasury, or a bank, or to patch up a tariff. American citizen! Well may you "tremble when you reflect that *God is just*, and that his *Justice cannot sleep forever.*"

Again, American citizen, how long have you had the power to put an end to the slave traffic along your coast whose horrors are hardly second to the "*Middle passage?*"

We answer, for *forty two years* that power has been fully in your keeping, to be exercised at your pleasure; and how have you discharged that trust? Let the thousands upon thousands of husbands and wives, parents and children that have been torn asunder by the ruthless hand of the slave trader, and transported to the dank rice and cotton swamps of the south, answer? Let the millions that have gone to an early judgment, as swift witnesses against you, answer? Let all the wretchedness, agony, despair and death, that *your faithlessness* has brought upon the enslaved millions, come home to your own souls, like Banquo's Ghost, to rouse you to a sense of your duty, or else give you a fortaste of the answer that is recorded against you.

And again, how long have you had the power to prohibit the *migration* of slaves from one State to another, and thereby put an end to the inter state slave trade? and by neglecting and refusing to do so, how long have you encouraged the now planting States, to drive the

business of *slave breeding* for the Southern market? All the crime and guilt of the inter-state slave trade is upon your heads; all the blood of those slaves, who have perished in rice and cotton swamps of the South, is in your skirts, and all the pain and anguish and despair which have crushed and overwhelmed three millions, of stricken slaves, will be in your souls, unless you repent, and do works meet for repentance. Let no American citizen think to throw this responsibility upon others, while he is silent, or i . Let no choice of evils excuse him from the honest, firm, out spoken, and out acted duty, which for years he has owed to the slave.

But this is not all. Since the formation of our National Government, nine new Slave States have been brought in to this Union. The blighting curse of slavery has, by he faithlessness of the American citizen, been extended protected, and perpetuated over territories, equal in size to the original thirteen States. All this the American citizen *had full power* to prevent. Before they were admitted, Congress had power to abolish their slavery and to secure perfect immunity to the slave. Let the American citizen, if he would learn the crushing weight of his responsibilities, look to the fruit of his work in Florida, Alabama, Mississippi, Louisiana, Tennessee, Kentucky Missouri, Arkansas, Texas, and perhaps, now to be added, New-Mexico and California. If he thinks the cup of Divine wrath is not yet full, let the latter come in, as Slave States and there can be little doubt that it will then overflow the very brim. Be it known that, as American citizens, we have had the full power in our hands for years, to control, and put an end to all these evils,

and nothing *but the lack of a disposition*, has prevented us from the exercise of that power—so that before God, and the world, the whole guilt of slavery rests upon our heads—the blood of six millions of slaves is now in our skirts; and nothing but the most bitter tears of repentence, producing, in us, the appropriate and necessary fruits, can remove that sinking burden from our souls. Else, like the ghost of Ann, to Richard, the boding cry of all these murdered slaves will come and say "let me sit heavy on thy soul" in Judgment.

THE END.